156-061

RECORD, CASE No. [illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., ~~[illegible]~~. 97

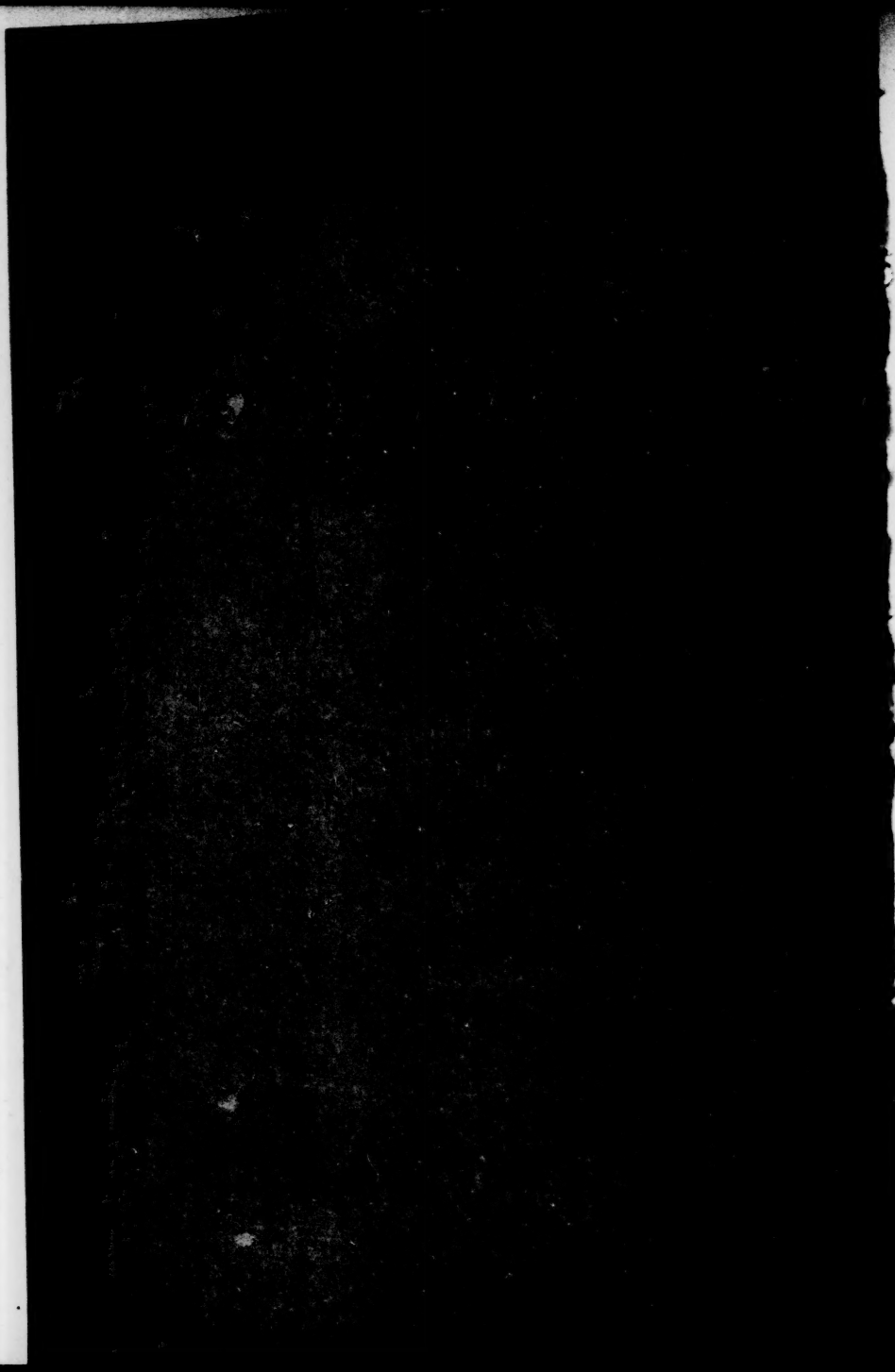
JOSEPHINE P. WALDRON, PLAINTIFF IN ERROR,

vs.

MARY A. WALDRON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED FEBRUARY [illegible], 1891.



RECORD, CASE No. 14,504.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No, 398.

JOSEPHINE P. WALDRON, PLAINTIFF IN ERROR,

vs.

MARY A. WALDRON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Præcipe	2	1
Bond for costs	3	2
Summons	4	2
Declaration	6	3
Plea of defendant	8	5
Demurrer to plea	10	6
Stipulation setting demurrer for argument	11	6
Order: Hearing of demurrer	12	7
Order: Sustaining demurrer	13	7
Order: Continuing cause	14	7
Order: Continuing cause	15	8
Motion of plaintiff to suppress portions of testimony	16	8
Motion of defendant to suppress depositions	22	11
Order: Hearing of cause	24	12
Order: Hearing of cause	25	12
Order: Hearing of cause	26	13
Order: Hearing of cause	27	13
Order: Hearing of cause	28	13

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	Original.	Print.
Order: Hearing of cause	29	14
Order: Hearing of cause	30	14
Order: Hearing of cause	31	14
Order: Hearing of cause	32	15
Order: Hearing of cause	33	15
Order: Hearing of cause	34	15
Verdict of jury	35	16
Motion for new trial	36	16
Order: Motion for new trial argued	40	18
Notice of motion to enter judgment	41	18
Motion in arrest of judgment	42	19
Judgment	45	20
Bill of exceptions	47	21
Motion to suppress depositions	47	21
Plaintiff's opening statement	50	23
Plaintiff's evidence	55	26
Testimony of Henry Kirtland	55	26
Marius Kasparson	84	44
John B. O'Neil	101	54
John Jourdan	112	61
John W. Duke	114	63
Mary A. Waldron	117	65
Deposition of Jay H. Adams	179	105
Albert Wiler	180	106
Testimony of W. W. Waldron	181	107
Certified copy of record in divorce proceedings offered in evidence	185	108
Certified copy of record in divorce suit of Mary A. Waldron *vs.* Edward H. Waldron	188	111
Indiana statutes as to divorce	193	116
Testimony of Mary A. Waldron (recalled)	196	117
A. Orth Behm	196	118
Deposition of John C. Brockenbrough	196	118
Defendant's evidence	199	119
Deposition of Nicholas Gribbling	199	119
Cross-examination of Albert Wiler	200	119
Mrs. A. R. Ingersoll	202	120
Mrs. O. C. Goldsmith	203	121
Mrs. Sarah E. Eldred	206	122
Deposition of Annie Horan	210	125
Robert Davie	221	131
Proposition of Mary A. Waldron to Edward H. Waldron about alimony	227	134
Deposition of Robert Davie (recalled)	228	135
Testimony of Thomas N. Vallins	235	139
Edward A. Dreyfus	241	142
John Early	244	144
Dr. Lyman Ware	246	145
Edward H. Waldron	251	148
Record of divorce suit of Mary A. Beauchamp *vs.* Wm. W. Beauchamp	255	149
Testimony of Edward H. Waldron (resumed)	264	155
Copy of divorce decree sent Edward H. Waldron	298	175

	Original.	Print.
Letter of E. H. Waldron to Virgil Russel, Sept. 15, 1865	305	179
Testimony of John Wilson	325	190
Emory J. Waldron	330	192
Mrs. Annie F. Rhodes	346	201
Mrs. Bridget Milan	347	202
Phillip Leonnecbacher	351	205
Mrs. Katie Waldron	355	207
Thomas L. Brannan	367	214
Mrs. Josephine P. Waldron	376	219
Extract from Chicago Tribune, June 7, 1888	393	229
Extract from Chicago Times, June 8, 1888	397	231
Præcipe in this case, filed June 5, 1888	402	233
Plaintiff's evidence in rebuttal	413	240
Deposition of Joseph Hedges	413	240
Wm. C. Wilson	419	243
Testimony of Annie Casperson	428	248
C. R. Cummings	432	251
Deposition of John M. Larue	435	252
A. Orth Behm	436	253
Testimony of Marius Casperson	441	256
Charles Morton	442	257
W. W. Waldron (recalled)	443	257
Mrs. Mary A. Waldron (recalled)	451	262
Argument of Mr. Aldrich for plaintiff	452	262
Mr. Dexter's closing argument	458	266
Instructions asked by defendant and refused	461	268
Charge to the jury	464	270
Exceptions to charge	482	280
Motion for new trial	483	281
Motion overruled and exception	487	283
Motion in arrest of judgment	488	284
Certificate to bill of exceptions	490	288
Motion that judge do not sign bill of exceptions, ruling thereon, and exception noted	491	285
Bond	492	286
Clerk's certificate	495	287
Assignment of errors	496	287
Writ of error	504	292
Citation	505	292
Proof of service of citation	506	293

a United States Circuit Court, Northern District of Illinois.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

E. Walker and C. B. McCoy, attorneys for plaintiff in error.
Charles H. Aldrich, attorney for defendant in error.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Romanzo Bunn, judge of the district court of the United States for the western district of Wisconsin, on Thursday, the tenth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, *Clerk.*

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fifth day of June, 1888, came the plaintiff, by her attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, her præcipe for a writ of summons, and also at the same time filed her bond for costs in said entitled cause; which said præcipe and bond are in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, July Term, A. D. 1888.

MARY WALDRON, Plaintiff,
vs.
JOSEPHINE P. WALDRON, Defendant. } Damages, $100,000.00.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case, to the damage of said plaintiff in the sum of one hundred thousand dollars, and direct the same to the marshal of the United States of America for the northern district of Illinois to execute, and make it returnable to the July term of said court, A. D. 1888.

CHARLES H. ALDRICH,
Plaintiff's Attorney.

William H. Bradley, Esq., clerk U. S. cir. c't.

(Endorsed:) Filed June 5, 1888. Wm. H. Bradley, clerk.
1—398

3 *Bond for Costs.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, —— Term, A. D. 1888.

MARY WALDRON, Plaintiff, *vs.* JOSEPHINE P. WALDRON, Defendant. } Trespass on the Case.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by plaintiff hereby agree and stipulate that execution may issue against my property for any costs taxed against the plaintiff.

Dated this fifth day of June, A. D. 1888.

CHARLES H. ALDRICH.

(Endorsed:) Filed June 5, A. D. 1888. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the fifth day of June, 1888, there issued out of said clerk's office a writ of summons in said entitled cause; which said writ, together with the return of the marshal thereto attached, *are* in the words and figures following, to wit:

Summons.

Circuit Court of the United States of America, Northern District of Illinois, *ss:*

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon Josephine P. Waldron, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of July next, to answer unto Mary Waldron of a plea of trespass on the case, to her damage, as is alleged, of one hundred thousand dollars; and have you then and there this writ.

Witness the Hon. Samuel F. Miller, acting Chief Jus-
[SEAL.] tice of the Supreme Court of the United States of America, at Chicago aforesaid, this 5th day of June, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the 112th year.

WM. H. BRADLEY, *Clerk.*

5 *Special Deputy's Return.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Know all men by these presents that I have appointed and by these presents do appoint Wm. Law my true and lawful deputy to execute the annexed writ — Mary Waldron *vs.* Josephine P. Waldron, and to make return of the execution thereof according to law.

Chicago, June 6th, 1888.

FRED'K H. MARSH, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit, by reading the same to and in the presence and the hearing of Josephine P. Waldron this 6th day of June, A. D. 1888.

F. H. MARSH,
United States Marshal,
By W. T. LAW, *Dep.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Wm. Law, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him in addition to the fees was actually incurred, and that the same is according to law.

——— ———.

Subscribed and sworn to before me this 7th day of June, A. D. 1888.

[SEAL.] MARK A. FOOTE,
Notary Public.

(Endorsed:) Filed June 7th, A. D. 1888. Wm. H. Bradley, clerk.

6 Afterward, to wit, on the thirtieth day of June, 1888, came the plaintiff, by her attorney, and filed in said clerk's office her declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Illinois, to the July Term, A. D. 1888.

MARY WALDRON }
vs. } Case.
JOSEPHINE P. WALDRON. }

Mary Waldron, who is a citizen of the State of Indiana and resides at Lafayette, in said State, plaintiff, by Charles H. Aldrich, her attorney, complains of Josephine P. Waldron, who is a citizen of the State of Illinois and resides at Chicago, in the northern district

of said State, defendant, of a plea of trespass on the case, for that whereas the said defendant, contriving and wrongfully, wickedly, and unjustly intending to injure the said plaintiff and to deprive her of the comfort, fellowship, society, aid, and assistance of Edwin H. Waldron, the then husband of the said plaintiff, and to alienate and destroy his affection for said plaintiff, on, to wit, the 6th day of June, A. D. 1886, and on divers other days and times between said 6th day of June, A. D. 1886, to the 21st day of June, A. D. 1887, at, etc., wrongfully, wickedly, and unjustly debauch- and carnally knew the said Edwin H. Waldron, then and there still being the husband of the said plaintiff, and thereby the affection of the said Edwin H. Waldron for the said plaintiff was then and there alienated and destroyed, and also by reason of the premises the said plaintiff from thence hitherto wholly lost and was deprived of the comfort, fellowship, society, and assistance of the said Edwin H. Waldron, her said husband, in her domestic affairs, which the said plaintiff during all that time ought to have had and otherwise might and would have had, etc., aforesaid.

And for that whereas the said defendant, contriving and wrongfully, wickedly, and unjustly intending to injure the said plaintiff and to deprive her of the comfort, fellowship, society, aid, and assistance of Edwin H. Waldron, the then husband of the said plaintiff, and to alienate and destroy his affection for the said plaintiff, on, to wit, the 6th day of June, A. D. 1886, and on divers other days and times between said 6th day of June, A. D. 1886, and the 21st day of June, A. D. 1887, at, etc., wrongfully and unjustly sought and made the acquaintance of Edwin H. Waldron, the husband of the said plaintiff, and then and there, well knowing that said Edwin H. Waldron was the husband of said plaintiff, wrongfully, wickedly, and unjustly besought, persuaded, and allured the said Edwin H. Waldron to desert and abandon the said plaintiff, and thereby the affection of said Edward H. Waldron for the plaintiff was alienated and destroyed, and also by reason of the premises the plaintiff has from thence hitherto been wholly deprived of the affection, society, aid, and assistance of her said husband *in her said husband* in her
7 domestic affairs, which the plaintiff during all that time ought to have had and otherwise might and would have had, and also by reason of the premises the said plaintiff during all said time from thence hitherto suffered great mental anguish and loss of social reputation at, etc., aforesaid, to the damages of said plaintiff of one hundred thousand dollars, and therefore she brings her suit, etc.

CHARLES H. ALDRICH,
Attorney for Plaintiff.

(Endorsed:) Filed June 30, 1888. Wm. H. Bradley, clerk.

8 Afterward, to wit, on the third day of October, 1888, came the defendant, by her attorneys, and filed in said clerk's office her plea in said entitled cause; which said plea is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court of the United States for said District.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Case.

And the said Josephine P. Waldron, defendant, by A. & C. B. McCoy, her attorneys, comes and defends the wrong and injury when, &c., and says that the said several causes of action in said declaration mentioned grow out of the relation of husband and wife heretofore existing between said plaintiff and one Edward H. Waldron, in said declaration mentioned, and that said causes of action are only maintainable by reason of the said relation of husband and wife.

That prior to the commencement of this suit, on, to wit, the 21st day of June, A. D. 1887, the said plaintiff, by her own act, voluntarily terminated the said relation of husband and wife theretofore existing between herself and said Edward H. Waldron by procuring from him a decree of divorce, and from thence
9 hitherto the said relation of husband and wife between said plaintiff and said Edward H. W-ldron has ceased and been determined, by reason whereof the said several causes of action in said declaration mentioned are not now maintainable by the said plaintiff; and of this the said defendant, Josephine P. Waldron, puts herself upon the country.

JOSEPHINE P. WALDRON, *Defendant*,
By A. & C. B. McCOY, *Her Attorney-*.

And for further plea in this behalf the defendant, Josephine P. Waldron, by A. & C. B. McCoy, her attorneys, comes and defends the wrong and injury when, etc., and says that she is not guilty of the said supposed grievances above laid to her charge or any or either of them in manner and form as the plaintiff has above thereof complained against her; and of this the said defendant puts herself upon the country, &c.

JOSEPHINE P. WALDRON, *Defendant*,
By A. & C. B. McCOY,
Defendant's Attorneys.

(Endorsed:) Filed Oct. 3, 1888. Wm. H. Bradley, clerk.

10 Afterward, to wit, on the thirteenth day of October, 1888, came the plaintiff, by her attorney, and filed in said clerk's office her demurrer to the plea of the defendant in said entitled cause; which said demurrer is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the United States Circuit Court. Gen'l No, 20966; Term No., 525.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Case.

And the plaintiff, as to the plea of the defendant by her firstly above pleaded, says that the same and the matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to bar her, the plaintiff, having her aforesaid action, and she is not bound by law to answer the same; and this she is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment and her damages, etc., to be adjudged to her, etc.

And the plaintiff, as to the plea of the defendant by her secondly above pleaded and whereof she has put herself upon the country, does the like.

CHARLES H. ALDRICH,
Att'y for Plaintiff.

(Endorsed:) Filed Oct. 13, 1888. Wm. H. Bradley, clerk.

11 Afterward, to wit, on the eighth day of November, 1888, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the U. S. Circuit Court.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Case. No. 525.

It is hereby stipulated that the demurrer heretofore filed in the above-entitled cause may be set down for argument on Monday, November 12th, 1888, at 10 a. m, or as soon thereafter as the same may be heard by the Hon. Henry W. Blodgett, judge, on contested-motion calendar.

CHAS. H. ALDRICH,
Attorney for the Plaintiff.
A. & C. B. McCOY,
Attorneys for the Defendant.

(Endorsed:) Filed Nov. 8, 1888. Wm. H. Bradley, clerk.

12 Afterward, to wit, on the twelfth day of November, in the adjourned October term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Case.

Now come the parties, by their attorneys, and now comes on to be heard the demurrer of the plaintiff to the first plea filed herein, and after hearing the arguments of the counsel the court takes the same under advisement.

13 Afterward, to wit, on the nineteenth day of November, in the adjourned October term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Case.

The court, having considered and being now fully advised upon the demurrer of the plaintiff to the first plea filed herein, sustains said demurrer, and thereupon the defendant, by her attorney, moves the court for leave to amend said plea; and the court, being now fully advised upon said motion, overrules the same; to which ruling of the court the defendant, by her attorney, now excepts.

14 Afterward, to wit, on the eighteenth day of January, 1889, in the December term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Case.

Now come the parties, by their attorneys, and on motion of the defendant, upon affidavit filed, it is ordered that this cause be continued for the term.

15 Afterward, to wit, on the tenth day of June, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. William J. Allen, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Case.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the defendant, upon affidavit filed, to continue this cause, and after hearing the arguments of the counsel the court sustains said motion and orders that said cause be continued at the costs of the defendant.

16 Afterward, to wit, on the 21st day of January, 1890, came the plaintiff, by her attorneys, and filed in said clerk's office her motion to suppress portions of the testimony in said entitled cause; which said motion is in the words and figures following, to wit:

In the United States Circuit Court, Northern District of Illinois.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON.

The plaintiff moves to strike out the following questions and answers thereto and each of them, on the ground that the same and each of them are incompetent, immaterial, and irrelevant, in the deposition of Sarah E. Eldrid:

Questions and answers from 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 all out to 58 of the cross-examination.

Also questions and answers 70, 78, 79, 80, 81 of the cross-examination of this witness.

Also questions and answers 90, 91, 92, 93, 94, 95, 96, 97, 101, 102, 103, 104, 106, 108 of the same cross-examination.

Also questions and answers 115, 116, 117, 118, 120, 121, 134, 140, 142, 143, 144, 149, 152, 154, 155, 156, 157, 158, 159, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 181, 182, 183, 184, 185, 186, 187, 197, 203, 219, 220, 221, 224, 225, 240, 241, 255, 267, 268, 269, 270, 271, 272 of the same cross-examination.

Also from the testimony of William C. Wilson the interrogatories and answers thereto as follows: Nos. 50, 51, 52, 53, 54, 55, 56, 58, 59, 64, 67, 76, 1–2, 77, 78, 79, 80, 82, 83, 91, 92, 94, 97,
17 105 of the cross-examination of said witness.

Also Nos. 9 and 10 of the redirect examination of said witness.

Also from the testimony of Albert Wiler the following interrogatories and answers thereto: 9, 11, 15, 16, 25, 26, 35, 36 of the cross-examination of said witness.

Also from the testimony of A. Orth Behm the following inter-

rogatories and answers thereto: Nos. 8, 10, 12, 13 of the cross-examination of said witness.

Also questions 1, 2, 3, 5, 6, 7, 8, 9, 10, 13, 14 of the recross-examination of said witness.

Also from the testimony of Mrs. Marie Ingersoll the following interrogatories and answers thereto: Nos. 2, 4, 6 of the cross-examination of said witness.

Also from the testimony of Mrs. Laura J. Taylor the following interrogatories and answers thereto: 7, 8 of the cross-examination of said witness.

Also from the testimony of Mrs. Emeline McGinley the following interrogatories and answers thereto: Nos. 6, 8, 9, 24, 25, 26, 27, 28, 29, 37, 38, 39, 42, 43, 44 of the cross-examination of said witness.

Also from the testimony of Mrs. Adell Ingersoll the following interrogatories and answers thereto: Nos. 7, 8, 11, 12, 13, 15 of the cross-examination of said witness.

Also from the testimony of Mrs. H. E. Doolittle the following interrogatories and answers thereto: Nos. 20, 24, 27 of the cross-examination of said witness.

18 Also from the testimony of Mrs. O. C. Goldsmith the following interrogatories and answers thereto: Nos. 4, 5, 8, 24, 26, 27, 28, 29, 31, 33, 34, 36, 38, 39, 41, 42, 45, 46, 47, 52, 55, 56, 57 of the cross-examination of said witness.

Also from the testimony of Mrs. Charles B. Robertson the following interrogatories and answers thereto: Nos. 8, 9, 12, 13, 17 of the cross-examination of said witness.

Also from the testimony of Mrs. Eliza B. Vinhedge the following interrogatories and answers thereto: Nos. 9, 11, 12, 13, 14, 15 of the cross-examination of said witness.

Also from the testimony of Dr. B. F. Ingersoll the following interrogatories and answers thereto: Nos. 15, 16, 17, 19, 20, 21, 24, 25 of the cross-examination of said witness.

Also from the testimony of Dr. Joel M. Ingersoll the following interrogatories and answers thereto: Nos. 4, 8, 10, 11, 12, 13, 17, 18, 19, 20, 22 of the cross-examination of said witness.

Also from the testimony of H. E. Doolittle the following interrogatories and answers thereto: 8, 9, 11, 12, 13 of the cross-examination of said witness.

Also from the testimony of F. E. D. McGinley the following interrogatories and answers thereto: Nos. 6, 9, 11, 12, 13, 14, 15, 20, 23 of the cross-examination of said witness.

19 Also from the testimony of S. O. Taylor the following interrogatories and answers thereto: 4, 5, 6, 9, 10, 11, 12 of the cross-examination of said witness.

Also from the testimony of Dr. Wm. W. Vinnedge the following interrogatories and answers thereto: Nos. 2 and 4 of the cross-examination of said witness.

Also from the testimony of Mrs. John D. Leonard the following interrogatories and answers thereto: 4, 5, 6, 7 of the cross-examination of said witness.

Also from the testimony of Oliver C. Goldsmith the following in-

terrogatories and answers thereto: 3, 4, 5, 6 of the cross-examination of said witness.

Also Nos. 1 and 2 of the recross-examination of the same witness.

Also from the testimony of Mr. Adams Earl the following interrogatories and answers thereto: 4, 5, 9, 13, 14, 15 of the cross-examination of said witness.

Also from the testimony of Mrs. Martha J. Earl the following interrogatories and answers thereto: 1, 2, 5, 9, 10 of the cross-examination of said witness.

Also from the testimony of Moses Fowler the following interrogatories and answers thereto: Nos. 5, 6, 7, 8 of the cross-examination of said witness.

Also from the testimony of Robert Davie the following interrogatories and answers thereto: Nos. 6, 7, 8, 9, 10, 11, 12, 13 of the cross-examination of said witness.

Also from the testimony of Dr. Robert M. O'Ferrall the
20 following interrogatories and answers thereto: Nos. 3, 4, 5, 6, 7, 8, 14, 30, 70, 84, 90, 91, 92, 96, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 115, 116, 117, 126, 129, 130, 131, 132, 137, 138, 139, 142 of the cross-examination of said witness.

Also from the testimony of Nicholas Gribbling the following interrogatories and answers thereto: 8, 9, 10, 11, 12, 14, 15 of the direct examination of said witness.

Also Nos. 1, 2, 3 of the cross-examination of said witness.

Also from the testimony of Thomas L. Brannon the following interrogatories and answers thereto: Nos. 52, 53, 53½, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 79, 80, 91, 92, 93, 94, 95, 97, 98, 99, 102, 103, 104, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 153½, 159, 160, 161, 163, 164, 165, 166, 167, 169, 170, 174, 175, 176, 177, 178, 180, 181, 183, 184, 185, 186, 187, 191, 192, 193, 198, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 226, 226½, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268 of the direct examination of said witness.

Also Nos. 294, 294½, 320, 322, 324, 335, 336, 350, 351, 352, 353, 354, 355, 356, 358, 359, 360, 361, 362, 363, 364, 365, 366, 368, 370, 371, 372, 373, 374, 375, 407, 408, 409 of the cross-examination of said witness.

21 Also Nos. 421, 422 of the re-examination of said witness.

Also from the testimony of Richard H. Godman the following interrogatories and answers thereto: Nos. 20, 21, 22, 23, 24, 25, 30, 31, 32, 33, 34, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 52 of the direct examination of said witness.

Also 58 of the cross-examination of said witness.

Also from the testimony of Ann A. Horne the following interrogatories and answers thereto: 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 49, 50, 53, 54, 58, 59, 60, 62, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 81, 82, 83, 85, 86, 87, 88, 89, 90, 93, 94, 105, 106, 109, 111,

113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 125, 126, 127, 128, 129, 130, 131, 133 of the direct examination of said witness.

Also Nos. 30, 31, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 53, 54, 55, 58, 59, 60, 62, 63, 64, 65, 66, 67 of the cross-examination of said witness.

Also 1 and 3 of the redirect examination of said witness.

Also from the testimony of Robert Davie the following interrogatories and answers thereto: Nos. 5, 6, 7 of the cross-examination of said witness.

Also Nos. 3, 5, 6, 7, 8, 9, 10, 11, 12 of the second cross-examination of said witness.

Also from the testimony of A. Orth Behm the following interrogatories and answers thereto: Nos. 12, 13, 14, 15 of the cross-examination of said witness.

22 Also 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 of the recross-examination of said witness.

CHAS. H. ALDRICH,
WIRT DEXTER,
For Plaintiff.

(Endorsed:) Filed Jan'y 21, 1890. Wm. H. Bradley, clerk.

On the same day, to wit, on the twenty-first day of January, 1890, came the defendant, by her attorneys, and filed in said clerk's office her motion to suppress the depositions of Robert Davie and others in said entitled cause; which said motion is in the words and figures following, to wit:

23 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for said District.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Term No., 525; Gen. No., 20966.

Now comes the defendant, by her attorneys, E. Walker and A. & C. B. McCoy, and moves that the depositions of the following-named witnesses heretofore taken in the above-entitled cause and heretofore filed in said cause in the clerk's office of this honorable court be suppressed for immateriality:

The deposition of Robert Davie, the deposition of John M. La Rue, the deposition of William C. Wilson, the deposition of Jay H. Adams, the deposition of Adam O. Behm, the deposition of Mrs. Mary Ingersoll, the deposition of Laura J. Taylor, the deposition of Emiline McGinley, the deposition of Mrs. H. E. Doolittle, the deposition of Mrs. Charles D. Robertson, the deposition of S. O. Taylor, the deposition of Dr. William W. Vinnedge, the deposition of Mrs. John D. Leonard, the deposition of John C. Brockenbrough, the deposition of Robert Davie, recalled, and interrogatories 1 to 17, inclusive, with the answers to all and each of said interrogatories of the depo-

of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and, after hearing additional evidence, without concluding the same, the hour of adjournment having arrived, it is ordered that the further trial of this cause be postponed until to-morrow morning.

30 Afterward, to wit, on the twenty-ninth day of January, 1890, in the December term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and, after hearing additional evidence, without concluding the same, it is ordered that the further trial of this cause be postponed until to-morrow morning.

31 Afterward, to wit, on the thirtieth day of January, 1890, in the December term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and, after hearing additional evidence without concluding the same, it is ordered that the further trial of this cause be postponed until to-morrow morning.

32 Afterward, to wit, on the thirty-first day of January, 1890, in the December term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and, after hearing the concluding evidence and a part of the arguments of the counsel, it is ordered that the further trial of this cause be postponed until to-morrow morning.

33 Afterward, to wit, on the first day of February, 1890, in the December term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and, after hearing additional arguments of the counsel, it is ordered that the further trial of this cause be postponed until Monday morning next.

34 Afterward, to wit, on the third day of February, 1890, in the December term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

Now *come* again come the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after hearing the concluding arguments of the counsel and receiving the instructions of the court the jury retired to consider of their verdict.

35 Afterward, to wit, on the fourth day of February, 1890, in the December term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

Now come again the parties, by their attorneys, and the jury in this behalf empaneled and sworn this day returned into court their verdict as follows: We, the jury, find the defendant guilty and assess the damages at seventeen thousand and five hundred dollars.

And thereupon the defendant, by her attorney, moves the court for a new trial herein.

36 Afterward, to wit, on the twenty-second day of March, 1890, came the defendant, by her attorneys, and filed in said clerk's office her motion for a new trial in said entitled cause; which said motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Illinois, Cook County. }

In the Circuit Court of the United States, Northern District of Illinois.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. }

Now comes the defendant, Josephine P. Waldron, by her attorneys, and moves the court to set aside the verdict rendered and to grant a new trial in this cause and assigns the following reasons therefor:

1st. The court admitted on the trial improper evidence on the part of the plaintiff over the objections of the attorneys for the defendant—that is to say:

a. The evidence of the plaintiff's witness, Henry Kirtland, as to the disposition by the defendant of the property and effects of her deceased husband.

37 *b.* The evidence of the plaintiff of the inducements, threats, or coercion of her husband, Edward H. Waldron, as influencing her action in procuring a divorce in La Fayette, Indiana, in June, 1887.

c. The evidence of Willard W. Waldron of the agency as well as the acts of Edward H. Waldron in procuring or assisting in the procurement of said divorce.

d. The certified copy of the transcript of record of said divorce, and the statement of the court that "the jury would take the record as conclusive."

e. The statutes of Indiana showing for what cause divorces could be granted in such State.

f. The evidence offered by the plaintiff showing the amount of money paid by said Edward H. Waldron for procuring said divorce.

g. Interrogatories 1 to 9, inclusive, and the answers thereto of the deposition of John N. Larue.

h. Interrogatories 1 to 10 and 12 to 17, inclusive, and the answers thereto of the deposition of A. Orth Bean; also redirect interrogatories 3, 4, and 5 and the answers thereto of the same witness.

i. Certain parts of the deposition of William C. Wilson, a witness on the part of the plaintiff.

2nd. The court, on the trial of said cause, erroneously admitted other improper evidence upon the part of the plaintiff over the objections of the defendant's attorneys.

3rd. The court erred in refusing to admit proper evidence offered by the defendant—that is to say:

38 *a.* The court refused to allow the defendant upon the cross-examination of the plaintiff to prove the conversation between herself and her said husband, Edward H. Waldron, and her admissions relative to permanent separation and the procurement of a divorce.

b. The court erred in refusing to permit the defendant upon the cross-examination of the plaintiff to prove the admissions and statements made to her by her said husband.

c. The court erred in refusing to permit the defendant upon the cross-examination of the plaintiff to prove the accusations and charges made by her said husband against the plaintiff in a conversation had *been* the husband and wife prior to the divorce.

d. The court erred in refusing to allow the defendant to prove by the plaintiff on her cross-examination the explanation made by her relative to matters connected with her divorce from her first husband, Beauchamp.

4th. The court erred in refusing to admit other proper evidence offered by the defendant.

5th. The court erred in refusing to charge the jury as requested by the defendant.

6th. The court erred in charging the jury as follows:

"We know as a matter of common knowledge and observation that, as a general rule, men woo and women are wooed and won; that men seduce and allure and lead women from the path of virtue, and that women are allured, seduced, and led astray, but we also know that from common observation that this general rule does not always hold, and that sometimes women woo men; that sometimes women allure, seduce, and debauch men; that women upon occasions

39 induce, allure, and persuade men to abandon and desert their wives and form new relations, lawful or unlawful. It will be for the jury to say, from all the evidence, what were the facts in this cause and whether the issue stand proved or unproved."

7th. The court erred in its charge to the jury on the measure of plaintiff's damages, as follows, to wit:

"The ground of damages will be mainly the injury to the plaintiff's feelings, the loss of her husband's support, his affections, his aid, society, and companionship, caused by the wrongful acts of the defendant, and should be fairly and dispassionately assessed according to the nature and extent of the injury so sustained by the plain-

tiff, from a full and careful consideration of all the evidence and circumstances in the case, including, of course, the evidence given you of the pecuniary circumstances of the defendant, and, in addition, the damages compensatory in character. If the jury believe that the injury was inflicted wantonly and maliciously, they may in their discretion and thereto such sum as you may think just and proper as exemplary or punatory damages as a punishment to the defendant."

The court erred in permitting plaintiff's attorneys in their closing argument, over the objection of the defendant, to comment upon and discuss the record of the divorce proceedings in Tippecanoe county, Indiana, and the evidence connected with such cause.

9th. The verdict of the jury is contrary to law and the evidence.

10th. The damages awarded by the jury are excessive.

C. B. McCOY AND E. WALKER,
Att'ys for Def't.

(Endorsed:) Filed M'ch 22, 1890. Wm. H. Bradley, clerk.

40 Afterward, to wit, on the fifth day of June, in the adjourned May term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Romanzo Bunn, district judge, is the following entry, to wit:

Order.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Trespass on the Case.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the defendant for a new trial herein, and after hearing the arguments of the counsel upon said motion the court takes the same under advisement.

41 Afterward, to wit, on the tenth day of July, 1890, came the plaintiff, by her attorney, and filed in said clerk's office her notice of motion to enter judgment in said entitled cause; which said notice, together with the acceptance of service endorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

MARY WALDRON
vs.
JOSEPHINE P. WALDRON. } Case.

Edwin Walker, Esq., and Messrs. A. & C. B. McCoy, attorneys for defendant.

GENTLEMEN: Take notice that on Thursday, July 10th, A. D. 1890, at 10 o'clock a. m., or as soon thereafter as counsel can be

heard, before the Honorable Walter Q. Gresham, at the room usually occupied by him in the Government building, I shall move the court that judgment be entered on the verdict heretofore rendered in the above-entitled cause in accordance with the opinion of the Honorable Romanzo Bunn, sitting as circuit judge, overruling the motion for a new trial in behalf of the defendant.

CHAS. H. ALDRICH,
Attorney for Plaintiff.

Dated at Chicago, Illinois, July 8th, 1890.

Received a copy of the above notice this July 8th, A. D. 1890.

E. WALKER,
Att'y for Def't

(Endorsed:) Filed July 10, 1890. Wm. H. Bradley, clerk.

42 On the same day, to wit, on the tenth day of July, 1890, came the defendant, by her attorneys, and filed in said clerk's office her motion in arrest of judgment in said entitled cause; which said motion is in the words and figures following, to wit:

43 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for said District.

MARY A. WALDRON } Term No., 525; Gen.
vs. } No., 20966. Action
JOSEPHINE P. WALDRON. } on the Case.

Motion in Arrest of Judgment.

And now *in* this day, the motion of the defendant to set aside the verdict and grant a new trial herein coming on to be heard, and the court having announced as its conclusion that the said motion should be denied—

Comes now the said defendant, Josephine P. Waldron, by Charles B. McCoy, her attorney, and enters this motion is arrest of judgment, and moves the court to perpetually stay the entry of a judgment in favor of the plaintiff and against the defendant upon the verdict in said cause rendered, and for the grounds of said motion now here shows the following, viz:

First. For that the declaration of the plaintiff in said cause sets forth two separate and distinct causes of action in separate counts in said declaration, and the said verdict is a general one in favor of the plaintiff, and the record does not disclose upon which of the said counts said verdict is rendered, and it is not sufficiently definite to furnish a basis for the entry of a judgment thereon.

Second. For that one of the counts in the plaintiff's declaration alleges as a cause of action the alienation by the defendant of the affections of one Edward H. Waldron from the plaintiff, he having

the deposition of William C. Wilson, the deposition of Jay H.
48 Adams, the deposition of Adam O. Behm, the deposition of Mrs. Mary Ingersoll, the deposition of Laura J. Taylor, the deposition of Emiline McGinley, the deposition of Mrs. H. E. Doolittle, the deposition of Mrs. Charles D. Robertson, the deposition of S. O. Taylor, the deposition of Dr. William W. Vinnedge, the deposition of Mrs. John D. Leonard, the deposition of John C. Brockenbrough, the deposition of Robert Davie, recalled, and the interrogatories 1 to 17, inclusive, with the answers to all and each of said interrogatories of the deposition of Albert Wiler. The defendant avers that the testimony of above witnesses as contained in said depositions is wholly immaterial and incompetent.

E. WALKER,
A. & C. B. McCOY,
Attorneys for Defendant.

(Endorsed:) Filed Jan'y 21, 1890. Wm. H. Bradley, clerk.

Thereupon Mr. Walker, for defendant, stated to the court that he wished to press said motion as to the depositions of William C. Wilson, the attorney for plaintiff in her divorce suit against Edward H. Waldron, at La Fayette, Indiana; the deposition of A. Orth Behm, the attorney of Edward H. Waldron in said divorce proceeding, and the deposition of John M. La Rue, the judge of the circuit court at La Fayette, Indiana, before whom said divorce suit was tried, as the depositions were tending to prove the evidence that was offered in said divorce proceeding, and to which suit the defendant in this case was not a party, and it does not appear that she was represented or had any knowledge of the divorce proceeding or of the evidence there offered and so sought to be proved in this case.

THE COURT: I will not suppress the depositions, but I will sustain the objections to the depositions as being incompetent evidence. Of course, if I change my mind I will change the ruling. It seems to me the proper motion is an objection to the competency of the evidence rather than a motion to suppress depositions.

Thereupon counsel for the defendant moved to suppress the depositions of the other witnesses named in said motion (except the deposition of the witness Robert Davie), in so far as they tended to show the good character on the part of the plaintiff subsequent to her marriage to Edward H. Waldron, stating that no attack would be made upon the character of the plaintiff subsequent to her marriage to Edward H. Waldron, but that the counsel for defendant would concede that her character for virtue, morality, and as a wife and mother subsequent to her marriage to Edward H.
49 Waldron had been above reproach.

Thereupon the court denied the said motion to suppress the said last-named depositions, but ruled that he would hold the evidence incompetent and immaterial if it should be sought to be read in evidence.

Thereupon counsel for the defendant moved to suppress so much

of the deposition of the witness Robert Davie as tended to show who were the witnesses and what evidence was offered on the trial of said divorce case, but did not press the motion to suppress as to other parts of said deposition.

Which motion was taken under advisement by the court, the court stating that he would pass upon the materiality of the evidence as it should be presented.

50 Thereupon a jury of twelve men was duly impannelled to try said case.

Thereupon Mr. Dexter, for plainfiff, made to the said jury an opening statement of the case which the plaintiff would seek to present before them, in the course of which he stated to the jury, among other things, as follows:

Plaintiff's Opening Statement.

This is an action which was brought by Mary A. Waldron, the plaintiff in this case, against the defendant, Josephine P. Waldron now, that was Josephine P. Alexander, for damages resulting from the alienating of the affections of her husband and breaking up her home. * * *

The plaintiff in this case, Mary A. Waldron, in 1865 was living at La Fayette, Indiana. In 1864 Waldron, the present husband of the defendant, came there *as* comparatively a young man and went into the employment of a railroad company at La Fayette. In the office of that company was also a brother of the plaintiff employed. They became acquainted, and they took their meals at the home of the plaintiff, and afterwards came there to board. That led to an acquaintance between the plaintiff and Waldron. That acquaintance ripened into affection, and some time in September, 1865, the plaintiff in this case and Waldron went down to Syracuse, New York, and in the presence of their mutual friends and relatives were married. * * *

They came back to La Fayette, Indiana, and commenced to live there. She had maintained herself previous to this marriage. * * * She had conducted a millinery business successfully in La Fayette, and when they came back he went to his railroad office and she to her millinery business, and they went on living together.

51 * * * It will be for you to say whether that relation would not have existed to-day had it not been for the intrusion of another person upon the scene. * * * That other person is the defendant, Josephine P. Waldron now, but until quite recently Josephine P. Alexander.

That lady was the wife of E. S. Alexander, a prosperous and wealthy man, who lived on Michigan avenue, in this city. There had been a long acquaintance between Alexander and Waldron. * * * Alexander, who died in February, 1886, had often been down to the Waldron place at La Fayette and Waldron had often been here to Alexander's house. * * *

The evidence will show that Mrs. Waldron, the present plaintiff, had been more than once at Mrs. Alexander's house, in the city of

Chicago; that she had been there with her boy. So that when the present defendant, then Mrs. Alexander, invited and received the attentions of Waldron that ultimately led to the divorce, as we shall insist, and to their marriage she well knew * * * where he lived and who he was, * * * and that he was the husband of that wife and the father of that boy. * * *

The testimony will show to you that, well knowing this situation, * * * the defendant began and continued an intimacy which we characterize, and think you will, as of an improper character for more than a year before the divorce between Waldron and the plaintiff occurred. * * *

In June, 1886, Waldron left his home in La Fayette, Indiana, and came up to Chicago and took rooms here, and substantially abandoned his wife and abandoned his home.

We shall show you that there immediately commenced a very great intimacy between Waldron and the present defendant; that they rode together; they drove together; that he made frequent visits to her house—clandestine visits—and passed night after night there, and we shall leave it for you to say whether thus
52 situated as these parties were that was a proper and pure intimacy or a criminal one. Certain it is it carried desolation and woe into the home of the plaintiff at La Fayette, in Indiana.

At the same time that he moved here and lived here the evidence will show that he cut off the supplies; that he refused to pay her bills; that he directed his agent to give notice to the tradesmen in the town that she should no longer be trusted on his account. The two things, the evidence will show, went on together—the abandonment of his home and his cutting off the family supplies. So that the fact is she was really in reduced circumstances to know where her daily support was to come from.

About this time, the evidence will show, there came suggestions of a divorce, first proceeding from Waldron. It will be for you to say, when you get the evidence, what the purpose of those suggestions was; whether it looked to the dissolution of those bonds for the purpose of forming some other and what that other was, and what the correspondence and union between the parties must have been, for we think the evidence will show you that it is idle to suppose that there was action singly and alone here and that these steps were taken with full acquaintance and knowledge by both parties and to a common end, which was accomplished, namely, the sundering and destruction of the old ties and the formation of the union that exists between them today.

The evidence will show pending the suggestions of divorce that the present plaintiff came up to Chicago to look after her husband. She came first in 1886. She received no satisfaction. She came again in March, 1887. She received no satisfaction, and then, the evidence will show, that in March, 1887, * * * she went down to the palatial home of this defendant on Michigan avenue and said to her, "I have come to see you, woman, to ask you to withdraw your hands from my husband. We have lived together

nearly a quarter of a century and he is the father of my
53 boy. We have climbed the hill of life together, and I ask
you to let us descent it together. You have but to say the word; you have but to raise your finger. You have drawn him from my home. I ask you to send him back. Withdraw the dark shadow of your influence from my fireside and return him home." And the evidence will show she was spurned with cold contempt from the parlor of this palatial residence of the defendant on Michigan avenue. * * * What was she to do? She was abandoned by her husband, deprived of her means of support, and she returned to her home in Lafayette, in Indiana, and there seemed nothing for her to do but to acquiesce in the suggestion of the divorce that had reached her. It seemed inevitable, and that she did do.

And I now come to a narration of a portion of this case that I assert has no parallel hardly. It will be proved in evidence before you here that this divorce proceeding was entirely managed by Waldron, the counsel paid by him, the expenses paid by him; that it was his plan, his scheme, to have it obtained in her name, and that right along there was intimacy with the defendant showing a union of purpose, a knowledge of common facts. The complaint is filed by the complainant in this case, and that complaint alleged as follows:

Thereupon counsel for the plaintiff read from the record in the divorce proceeding the following:

5. The plaintiff avers that the said defendant has not been to said plaintiff a good, faithful, and kind husband, but she charges, on the contrary, that he has been unmindful of and broken his marital vows in this, to wit:

A. That he has for more than a year past been guilty of "cruel and inhuman" treatment of this plaintiff in this, that he has become enamored of one Josephine P. Alexander, and that the said Josephine P. Alexander, as plaintiff believes, reciprocates his wishes,
and now through her inticements has so alienated him from
54 this plaintiff that he refuses, and for the last year has refused, to return to his home or to this plaintiff, and also refuses to provide for this plaintiff's support, but, on the contrary, has absolutely refused so to do, giving orders to his agents to do nothing for the support of the plaintiff, and threatens by his agents to take and carry away all of the household goods, and to drive her from their home; that she has remonstrated with him in regard to his course, but is only met by scorns and rebuffs; that plaintiff charges and believes it to be true that defendant's sole and only purpose for *do* doing is induced by his attachment to the said Josephine, and that at his own instance or at her instance he has pursued such a course of treatment towards this plaintiff as to make it intolerable any longer to endure with safety to her health or life.

Counsel for plaintiff said further to the jury, among other things, as follows:

"Here was an allegation that she has enticed him from his home, and the divorce was granted upon that ground, among others—that

is, the decree finds that the facts in the complaint were proved, and the divorce granted upon that ground."

Thereupon, after further opening statement to the jury by counsel for plaintiff and an opening statement to the jury by counsel for the defendant, the counsel for the plaintiff, in order to maintain the issues in her behalf, introduced evidence as follows:

55 PLAINTIFF'S EVIDENCE.

Testimony of Henry Kirtland.

Called on behalf of plaintiff, and examined by Mr. ALDRICH:

My name is Henry Kirtland. I reside at No. 83 23rd street, in Chicago. I am a married man. At the present time I am in the employ of Mr. Charles Schwartz, as a butler, at No. 1919 Prairie avenue. I have been there three years coming May.

I was formerly in the employ of E. S. Alexander. I went to him the first time in 1882, and was there a little over two years, to 1884, when I left his service. During this time I was employed as butler and steward and to take care of the house—run the house in fact. I returned to his service about a year after that, about three or four months before Mr. Alexander's death. On the second occasion I was employed as a valet—a professional nurse to him.

I know the defendant in this case. She was formerly Mrs. Alexander, the wife of E. S. Alexander, whom I have mentioned. I know E. H. Waldron, the present husband of the defendant, and have known him ever since I went to live with Mr. Alexander. I became acquainted with him through his visiting the house.

(Q.) You may state what were the relations of Mr. and Mrs. Alexander.

Objected to by counsel for defendant.

Mr. ALDRICH, for plaintiff: Mr. Walker has said, in his opening, that prior to this charge spread upon the record by us there was never a breath of suspicion against the defendant. We propose to show, by this witness, that her husband had suspected her of improper relations with Mr. Waldron, and set a watch upon her before his death. If it is proper for the opening statement it is proper proof.

56 The COURT: What Mr. Alexander suspected would not, of course, be competent, or, in fact, that he set a watch. I don't suppose that would be competent. Any admissions made by him outside I don't suppose would be competent. Any transactions between himself and wife might be competent, but not any admissions made outside.

(Mr. ALDRICH:) I propose to show, generally, that Mr. Alexander and his wife had not for years lived on amicable terms or occupied the same room or bed, and that he had suspicions of Mr. Waldron.

(The COURT:) I don't suppose that would be competent—that he had suspicions of Mr. Waldron or set a watch. He might do that without any reason for it at all. Anything that tends to show im-

proper relations between Mrs. Alexander and Waldron would, of course, be competent, but the fact that Alexander said so and so I don't suppose you can prove by a mere statement.

(Witness resumes:) Mr. Alexander died about the 23rd of February, 1886. He was in Chicago up to about the 6th or 7th of February, when he went to Louisville. I went with him to attend him. There was no one else went with us. He did not improve at Louisville.

Mrs. Alexander first reached Louisville about February 21st—on the same day she took him away. At that time he was alive. We got home to Chicago in the morning and he died the following morning.

I don't know whether Mr. Waldron was in the house when we reached home or not, but he was there very soon after; and from that time on he was there every day—more or less. He might miss a day, but he was there generally all the time. I don't know at what time he first came to Chicago to stay. I suppose he visited there when he came to Chicago to do business with Mr. Alexander.

I remained in the service of Mrs. Alexander after the death of Mr. Alexander up to about July—that is, engaged with Mrs. Alexander and Mr. Waldron.

After Mr. Alexander's death Mrs. Alexander took the body
57 East, to Brattleboro', Vermont. I went along. We were gone about 10 to 14 days, coming back by way of New York. I left Mrs. Alexander's service soon after we came back from New York, and then I went with Mr. Waldron right off in his office after Mrs. Alexander got through with me. That was probably about the second or third week in March—somewhere along there. I entered the service of Mr. Waldron, in the Metallic Packing Company. My duties were copying in his office. I used to have to call at the Alexander mansion on Michigan avenue very often to take notes or messages between them. The time run in between Mrs. Alexander's service and Mr. Waldron's. I considered myself in the employ of both.

Counsel for defendant objected to the witness stating what he considered, and moved that the last part of the answer be stricken out; which motion was overruled by the court.

When Mr. Waldron came to the city and was staying here first in 1886, after Mr. Alexander's death, he used to stay at the Grand Pacific hotel, but he afterwards took rooms at the Beaurivage flats. I attended upon him there as his valet. At that time I was frequently engaged in carrying notes between Mrs. Alexander and Mr. Waldron.

Mrs. Alexander during this time frequently entertained Mr. Waldron at her house and took him riding. Maurice Casperson was her coachman at that time. The carriage would come down to the corner of Van Buren street and Michigan avenue, where the Beaurivage flats are located, and she would be in the carriage and

he would go out there and get in the carriage with her. When he was at the Beaurivage flats these rides were very frequent. At that time he was at her house nearly all the time when he was not at his business. After business hours he was there. He gen-
58 erally entered the house from the alley. There is a barn in the rear of the lot. This was in February, March, and April of 1886, after Mr. Alexander's death. Mr. Waldron would go in the back door and go through the servants' rooms and get into the house.

I have heard Mrs. Alexander say to Mr. Waldron that she loved him. These expressions were used in her bed-room. I came to be there through valeting Mr. Alexander and attending Mrs. Alexander.

I had been with Mr. Alexander so long she preferred me, she said, to any one else. I used to rub her legs to get up the circulation when she was ill after her return from New York on the occasion of her burying her husband.

Her sickness was about a week after she returned, and I think was some time about the latter part of March; it might have been April. Mr. Waldron was in attendance upon that occasion also. He would be there night and day. He would give her medicine in conjunction with me; whichever was handy. He would stay around there and sleep in the next room—in Mr. Alexander's room.

On these occasions Mrs. Alexander would say she loved him and would fondle him—put her arms around him—and he would lie down on the bed. I don't think he got under the clothes, for he had his clothes on. He would lie on the outside. This occurred prior to the time of my leaving his service. He used to stay there all the time; many nights sleep all night there, and it was continued after her illness. On the occasion of these visits he always came into the house by the back way. The house fronts on Michigan avenue, and there is a front entrance to it.

On the occasion of his visits after her illness sometimes he slept in the house, or I at least infer that from his being there in the morning. He was there in the morning as early as eight o'clock, when I used to go there at that time.

He occupied Mr. Alexander's room. There was a passage-
59 way outside of this room, a hall running past this room and Mrs. Alexander's room, with a door from each opening into the hall. The bath-room and water-closet were just off Mr. Alexander's room, at the back, with one door opening into the bath-room from the hall and one from Mr. Alexander's room.

I knew Mr. Waldron was a married man during all this time. I only heard Mrs. Alexander speak of his being married in connection with saying he loved her, and that he and his first wife didn't get along together, and that his first wife complained of his being away so much. This statement was made after Mr. Alexander's death.

Mrs. Alexander was what I call real sick from four to five days at the time I have mentioned, after we got back from New York, and probably it was ten days before she was convalescent. I was

in attendance upon her all that time. These expressions of love and regard for each other were frequent.

Counsel for plaintiff offers in evidence a letter identified by the witness as having been received by him, marked "Plaintiff's Exhibit A," as follows:

PLAINTIFF'S EXHIBIT A.

"LA FAYETTE, INDIANA, *April* 6, 1886.

Mr. Kirtland:

DEAR SIR: In my opinion there is but one course for you to pursue in the premises alike honorable to yourself and the whole family, and that is to answer the gentleman that, as all of Mr. A.'s matters have been turned over to an administrator, you respectfully, etc., refer him to him for any information he may require. You may consistently inform him as to Mrs. Alexander's attention, presence at his death, etc. I am now informed that the suit pending in the railroad matters will probably be decided about the 15th, current. By the way, I think I would mention Judge Walker's name as administrator.

Yours truly, E. H. WALDRON."

60 Witness resumes:

Mr. Charles Alexander (a brother of E. S. Alexander, deceased), wrote to me from Brattleboro', Vermont, asking me questions. I wrote to Mrs. Alexander asking her if I should answer those questions. I got no answer from her, but received a telephone message from Mr. Walker's office. I did not write to Mr. Waldron, but he answered the letter; he assumed it — from Mrs. Alexander; he done Mrs. Alexander's affairs.

Cross-examination by Mr. WALKER, for defendant:

I wrote a letter to Mr. Waldron which elicited that letter from him in reply. I do not know whether I directed the letter to him at La Fayette, Indiana, or at Mrs. Alexander's house, No. 2028 Michigan avenue. I used to direct to one place as often as the other. He was stopping at her house in April, 1886; I swear to that. He was there all the time, more or less. I do not say that he was there permanently, but he was there nearly all the time, more or less, when he could get away, I suppose, from the time Mr. Alexander died, in February.

I do not remember the date of my letter to him. It was somewhere in February or March. My letter was merely asking information about answering Mr. Charles Alexander.

I saw Charles Alexander soon after Mr. Alexander's death. I do not remember how long after; it might have been the next day. It was before this letter was written to me by Mr. Waldron.

I do not remember whether I saw Charles Alexander after Mr. Alexander's death and before the date of this letter or not. I do not know when I saw him. I wrote to Mr. Alexander's father at Brat-

tleboro', Vermont, in answer to a letter I had from him, giving him the particulars of Mr. Alexander's death.

I cannot remember when or where I first met Charles Alex-
61 ander. He came to Mr. Alexander's house some time before Mr. Alexander died, but I do not remember when or where I first met him after Mr. Alexander's death, nor why he called upon me. I had not seen him to speak to him before he wrote the letter to me from Brattleboro', Vermont, after the death of Mr. Alexander. I wrote to Mrs. Alexander, after receiving this letter from him, that I remember of, and I presume the letter that I received from Mr. Waldron, postmarked at La Fayette, Indiana, was on account of the letter I had written to Mrs. Alexander, and which she might have sent to him at La Fayette, Indiana.

When I left Mr. Alexander's employ, after having been with him two years as a butler, I was not discharged, but discharged myself. I went back to Mr. Alexander's in December, 1885, and remained there about three months—up to Mr. Alexander's death, in February, 1886. From that time on I was working for Mr. Waldron and Mrs. Alexander up to July, 1886. Then I went to MacLachlan's grocery store as a clerk, where I remained three or four or five or six months. After that I was out of work and going out waiting and doing other things for three or four months. Then I went with Mrs. Potter Palmer, at her residence, either in October or November, 1886, I believe it was, where I remained until they went to Europe, three years ago this May. I entered Mrs. Schwartz's service right after quitting Mrs. Palmer's. My wife and family were keeping house and living on 22nd street all that time.

I was in the service of E. S. Alexander for three months—in November or December of 1885 and January and February of 1886. I had been there for at least two months before Mr. Alexander died—in February, 1886. From that time on I was working for Mr. Waldron and Mrs. Alexander up to July, 1886. Mrs. Alexander did not employ me to work for Mr. Waldron. He em-
62 ployed me. Mr. Waldron did not employ me to work for Mrs. Alexander, but I used to go to the house. Mrs. Alexander did not pay me for services rendered at that time.

I tell the jury I was working for both because I looked upon it as being such because they were so much together; because Mr. Waldron was staying there. I saw him there. While Mrs. Alexander was sick I was there, but do not say Mr. Waldron was there all the time, but more or less. I believe it was in March after we came back from New York that she was taken sick. She was very sick for about five or six days. Dr. Ware and Dr. Charles Gilman Smith were the physicians that attended her. She was very sick and confined to her bed and I was there all that time and waiting upon her. I had been East to attend the burial of her husband and was paid off for that service when my bill was rendered. I was paid for the services I rendered during the months of February and March after Mr. Alexander's death by Mrs. Alexander after I left her service and entered Mr. Waldron's office. That was in March.

Dr. Ware and Dr. Smith attended her, I suppose, 10 or 12 days

in March after we returned. It must have been the latter end of March. She was a very sick person and called upon me, because I had been so long in the house, to rub her limbs. That was the confidence she placed in me. It was that illness that I saw Mr. Waldron resting upon her bed. Sometimes I was present and sometimes I wasn't. There was no concealment at that time. Mr. Waldron was lying on the outside of the bed with his clothes on. Mrs. Alexander was convalescent then.

When I saw this she had been sick about 9 or 10 days. She was improving. The doctor said she was convalescent. I attended Mr. Alexander a good deal—the same kind of service—helping him to dress, rubbing his body and taking his pulse. I consider my-
63 self a professional nurse, a professional butler, a professional steward, and a professional valet; have no other profession at present and never had any other. I do not say that I am a professional nurse, but I consider myself a good nurse.

During the time Mrs. Alexander was convalescent Mr. Waldron was there, and in my presence and hearing she spoke to him in tones of endearment; there was no concealment. At that time I was receiving pay from Mrs. Alexander for my services.

I first communicated the information I have detailed here to Mr. Aldrich, attorney for the plaintiff, at his office some months ago; had told no one else of it. He sent me a subpœna to come to his office on the case. I do not know when it was, but the case was going to be tried in court and he subpœnaed me. I never went to Mr. Aldrich until after the case was about to be tried and I was subpœnaed as a witness to come to court.

I went to his office because he asked me to. I asked Mr. Schwartz if I should do so. I did not want to enter into the case at all. I was living with Mr. Schwartz then. I went to Mr. Aldrich's office about three times, I think.

I had a conversation with Mr. Aldrich's clerk about this matter before I had the conversation with Mr. Aldrich. That was some time before the case came on. He came to Mr. Schwartz' house. I saw him in the butler's pantry. I presume the young man was a lawyer in Mr. Aldrich's office. I had about the same number of conversations with him I had with Mr. Aldrich. He did not tell me how he learned I knew of these terms of endearment that passed between Mrs. Alexander and Mr. Waldron during her illness. He asked me what I knew about the case. I had never spoken to anybody about it at all until that time; I am positive of that. It was some time this last autumn when I spoke to this gentleman, Mr. Aldrich's clerk. I have not the date; I did not keep a diary of it.

The butler's pantry at Mrs. Schwartz' residence was the only
64 private place that I had, and there I stated to Mr. Aldrich's clerk what I have testified to. He said there was a suit pending or going to be tried, or something like that, and he represented the plaintiff's attorney, and I gave him a statement of all the information I had, so far as I could remember, that would aid the prosecution of this suit against my former employer with the consent of Mr. Schwartz. I had Mr. Aldrich see Mr. Schwartz before

I consented to come into court. Mr. Aldrich told me so, and I believe him. I conferred with Mrs. Schwartz several times. When I have had to attend court of course I have had to ask leave.

(Q.) I ask you why it was at that first interview with the young lawyer in the butler's pantry at Mrs. Schwartz' residence you communicated to him for the purpose of aiding the prosecution of this suit all the information you had that would reflect upon Mrs. Waldron.

(A.) Not until I had Mr. Aldrich's assurance that he had seen Mr. Schwartz and he gave his consent.

(Q.) But you said you told him in the butler's pantry what you would testify to?

(A.) Yes, sir; and Mr. Aldrich assured me before that that he had seen Mr. Schwartz.

(Q.) I ask you when you first saw Mr. Aldrich; when you first had a conference with him, and you said when you were subpœnaed to come *to come* to court. Then I asked you who you first communicated this evidence to, and you said to the young lawyer in his office.

(A.) Partially.

(Q.) If you want to make any correction, make it.

(A.) At that time I did not know anything about the case. I did not recall anything. It is only by repeated thinking and recalling the case that I thought of anything at all, and I saw Mr. Aldrich. I told Mr. Aldrich I would not give my testimony in
65 the case unless I had Mr. Schwartz' consent. He went and saw Mr. Schwartz, and Mr. Schwartz assured him and told him I could appear in the case and give such testimony as I knew, and then I spoke to Mrs. Schwartz, and she told me to go.

I had the assurance from Mr. Aldrich that he had seen Mr. Schwartz, and Mr. Schwartz consented before I told this young lawyer any details of the case. The young man called to see me and I would not give any details in the case until I had the assurance of Mr. Schwartz that I could do so, as I did not want to be mixed up in it at all, and then, when I had that assurance from Mr. Aldrich and I had Mrs. Schwartz's permission, then I told him the statement I have made. I saw Mr. Aldrich soon after. My impression is I was brought into court on a subpœna, and after that I went to Mr. Aldrich's office. I do not know how Mr. Aldrich found out I knew anything about this matter, but I suppose by making inquiry he found out that I had lived there. The conversation with the young lawyer was some time last autumn, when the suit was commenced. I had no conversation with any one until after the suit was commenced.

I have talked with the former coachman of Mrs. Alexander about this same matter sometimes; not what I would testify to, but we have talked over the matters that would occur, going on. I had no conversation with him about the evidence that was to be furnished by me and him in this case; not in conjunction, to put them together in any way.

I had no conversation with Charles Alexander about it; only

that I was engaged in the case, but not to go into the evidence at all. I did not go into the evidence; not a word.

I am certain that I told no one what I would testify to until after I was subpœn-ed, when the case was first called up here for trial, in 1889, as I understand it. It might have been the latter part of 1888 or the fore part of 1889.

66 I swear to it that I was not at Mr. Aldrich's office prior to the time that subpœna was served upon me to come to the court to attend the trial as a witness for the purpose of talking with him about this case and for arranging about my appearing here as a witness.

Mrs. Alexander's coachman was named Maurice Casperson. He is a Norwegian. We had frequent conversations about the occurrences that took place at the house between Mr. Waldron and Mrs. Alexander when I lived together with him. I do not know when he left there. I was not there when he left, but spoke with him about it after I left. I was never at Mr. Aldrich's office with him, and did not arrange for the payment of any money for the evidence I was to give or for the time that should be taken in this case, and did not state to Mr. Aldrich or any other person what my services would be worth in a matter of this kind and have not said to any one that I would receive from four to five hundred dollars for my evidence in this case.

Mr. Waldron went through the stable when he went to visit Mrs. Alexander. That was his habit. I was at Mrs. Alexander's three months, a little more or less, maybe, during the time I was in service with Mr. Waldron.

During the time I was in service with Mr. Waldron I stayed at No. 175 22nd street. I know that Mr. Waldron was visiting Mrs. Alexander, because he was there in the morning when I went there. I used to go there for messages before I went down to the office in the Adams Express building. I was in the habit of doing that every morning during the latter part of March and April and May, 1886. I did not say he lived there altogether, because during that time he had rooms in the Beaurivage flats, but he was there more or less. I saw him there in the morning. I used to call there about 8 o'clock. I did not say I saw him there every morning. I could not say how often; probably three or four

67 times a week; maybe less; I was not living there. I mean to say at the time I was there he did. I was there from the time Mr. Alexander died and afterwards, and when we came back from New York he always came that way from the stable. I did not say he was in Chicago when we returned from New York, but he was here mighty soon after. That was in the month of March, and I was living on 22nd street. I was not living at Mrs. Alexander's at that time. I used to go up there sometimes in the evening and walk around, and I would see him and know he went through the stable when he came in there every day. During the time Mrs. Alexander was sick he came in through the stable.

I was living with Mrs. Alexander at the time I was taking care of her, when she was sick, when she first came back from New York.

Her illness was during the first 60 days after she returned from the burial of her husband and from New York, and she had these two physicians there, and she was ill for 10 or 12 days, confined to her bed, and that was the time when I heard these expressions of endearment between them, when she was convalescent and in bed and afterwards, and that was in the months of March and April, 1886.

I considered myself at work for Mr. Waldron during these two months, and still I used to be there as well as in the office.

(Q.) You were working for Mr. Waldron when you were waiting upon Mrs. Alexander during her illness?

(A.) They were both connected together, and I thought I was working for both.

(Q.) Answer that question.

(A.) I was working for both.

(Q.) (Question read by reporter.)

A. "During that time I was at work for Mrs. Alexander." I might have had to go out occasionally, but I was there in the house part of the time, and Mr. Waldron at that time came in through the stable and back way, through the apartments of the
68 servants. I presume the coachman and servants had knowledge of it. He was in plain view of the neighbors on each side of Mrs. Alexander's if they were in the upper stories. There was a high fence, probably about 8 feet high.

Mr. Bigelow lives on the north. From their dining-room or sitting-room they could look directly into the yard of Mrs. Alexander, and so with Mr. and Mrs. Henry, who lived on the south side. I think the fence was 7 or 8 feet high, but never measured it. I do not think you could see a man in the other yard over the top of the fence.

I have myself seen Mr. Waldron come in through the stable and through the back yard and into the basement and into the house that way. I have seen Mr. Alexander in his lifetime come the same way.

Mr. Linnebacher, who had lived there all the time, came through the same way. He used no other entrance. That entrance was used by the men who were at the house more than the front entrance. Henry, the butler, used to come in and out that way when he wanted to. There was no secret about his coming in that way. He did not attempt to conceal it. There was no bell to ring when you once got through the stable; you could open the door and go in, and Mr. Waldron's method of entering the house was within the knowledge of all the help or domestics or servants, and also the butler.

I had no interview with Charles Alexander relative to this matter of my evidence before I was subpœnaed to attend court the first time, and have not since then had any interview with him relative to this matter. I never saw him until yesterday in the corridor here.

Witness identifies a letter as having been written by him to Mrs. Alexander, the defendant. Counsel for defendant offer said letter in evidence, and the same was marked "Defendant's Exhibit 1," and is as follows:

69 DEFENDANT'S EXHIBIT 1.

"175 22ND STREET, FLAT 7, *January* 4, 1888.

"Mrs. E. H. Waldron.

"MADAM: Mr. Charles Alexander called at my residence to-day and made arrangement with my wife for me to have an interview with him. His object I can only faintly guess at. Although you have not treated me in such a manner as would incline me to withhold any facts he might require or request from me, still I would inquire from you if I am at liberty to speak openly and unreservedly to him on such topics as he may suggest.

"Should I not have an answer to this I shall take it for granted you are indifferent on the matter.

"Respectfully yours, HENRY KIRTLAND."

(Witness resumes:) I received a telephone from the office of Mr. Walker in answer to that letter which I had written to Mrs. Waldron. The telephone came to me at Mrs. Schwartz's house asking me to call at Mr. Walker's office.

Mr. Walker, the attorney for the defendant, was administrator of the estate of E. S. Alexander, deceased, and I presume the sentence in the letter written to me by Mr. Waldron as follows: "You had better confer with Judge Walker about it," had reference to Mr. Walker. I understand he was conducting the affairs for Mrs. Alexander. He paid me a bill. I was living then at 175 22nd street, and I wrote this letter (Defendant's Exhibit 1) from there.

I never had a conference with Charles Alexander as to all the facts that I knew reflecting upon Mrs. Alexander or about the property until after this letter was written. I did not call at Mr. Walker's office in response to the telephone. I gave to Mr. Charles
70 Alexander a statement of the facts in the other suit he brought; that was about the estate of Mr. Alexander. He never talked with me about this case or about what I knew as to the relations between Mr. Waldron and Mrs. Alexander.

What I talked with him about was as regards the way Mr. Alexander left his money; to know whether I knew if Mr. Alexander had made a will or not; if I knew whether I had ever heard Mr. Alexander say if he had made a will or not.

I did not think Mrs. Alexander treated me right at the time I left her service. I think she did not remunerate me enough for my services—the services I had rendered to Mr. Alexander. This was what I referred to in the letter as to the manner of her treatment of me.

I rendered an account for these services and for all the money expended and it was paid.

Why she did not treat me fairly was because the time I spent with Mr. Alexander I was sitting up all night with him and I really think it would have been generous and treated me right if she had given me a small bonus. I think I had not been treated right by Mrs. Alexander.

My claim was for services rendered Mr. E. S. Alexander in his lifetime, and I made out a full itemized bill for all the monies I expended in and about the care of Mr. Alexander and took the bill to Mr. Walker. I was referred to him by Mrs. Waldron, and he gave me a check, and I receipted the bill. I have no grievance against her.

I did not think she treated me fairly because I used to have to sit up all night very often down at Louisville with Mr. Alexander, and very often I did not get any sleep, only about half an hour at the time, and I would be called up all night, and I think I was entitled to some further recompense than what my bill would amount to.

My daily and nightly money called for was all in my bill; but then for this onerous duty I had to do—taking charge of him
71 and having the sole and full responsibility on my hands—I think she might have made me some little present when I left. I did not render and account of these extraordinary services because she had always said how much she appreciated these services, and I thought it would occur to her herself.

There were no facts to give Mr. Charles Alexander in regard to the estate. The letter I wrote had no reference to this case; I knew nothing about this case when I wrote that. I did not know whether this case was pending then or not. I did not know anything about it when I wrote that letter on January 4th, 1888.

The account I rendered for services about which I have spoken was against the estate of Mr. Alexander and was paid by Mr. Walker, as administrator. I made no complaint to him of not having been sufficiently paid for my services.

While I was working for Mr. Alexander I was receiving $45 a month and board. While I was working for Mrs. Alexander, at the time she was ill, as I have stated, it was $5 a day and board.

(Witness is shown a paper, and identifies it as the bill rendered by him to Mrs. Alexander for the services rendered while she was ill.) The bill was marked "Exhibit A, Abbott," and is as follows:

EXHIBIT A, ABBOTT.

SEPTEMBER 4TH, 1886.

Mrs. E. S. Alexander to Henry Kirtland, Dr.

To serving breakfast, dinners, etc., 35 days, at $4 per day....	$140
To attending for fifteen nights, $5	75
Total	$215
By cash	67
Balance due	148
September 4th. By cash.....	20
Leaving a balance of.....	$128

Received payment September 6th,

HENRY KIRTLAND.

72 These services were rendered to Mrs. Alexander during the time she was sick. The bill was $5 a day while I was attending on Mrs. Alexander myself for 35 days, and 15 nights besides, at $5 a night. That was during her illness in the month of March or April. I was there 35 days at work during her illness and 15 nights. The night services were rendered during her illness and during the 35 days.

I find I was there up until much later than I supposed this morning. I was there right into June. Prior to that time, during the lifetime of Mr. Alexander, I was receiving $45 a month and board. I am receiving $50 a month now. In 1888 I was living on 22nd street. I moved to No. 83 23rd street on the first of May, 1888. We kept boarders. I only remember one, Mr. Siddons. I remember Archie Evans. He lived with us; it might have been 4 or 5 or 6 months. I cannot state the months or the season of the year. It might have been in June or July.

I never went to Mr. Aldrich's office and never talked with Mr. Aldrich about the matters connected with this case until after I was subpœnaed to come to court as a witness, but I do not remember when I was first subpœnaed. I have been subpœnaed two or three different times. I never made any arrangement with Mr. Aldrich about compensation for appearing as a witness, and I never received a cent, except what the officer paid me for coming down; I think it was a dollar and ten cents. I never went to his office to make an arrangement.

My wife run the boarding-house entirely. I don't remember the names of those boarding in the house, and I did not see them sometimes for a week at a time, and I do not remember whether there was a boarder with us by the name of Thomas N. Vallins in June and July, 1888, or not. I do not remember whether I called at Mr. Aldrich's office on Sunday about June 22nd or 23rd, 1888, or not. I do not remember of saying to one of my boarders named

73 Thomas N. Vallins, on Saturday evening, June 23rd, 1888, at my residence, that I had to go to a lawyer's office at twelve o'clock the next day, Sunday, and asking Mr. Vallins to ride down with me; to the best of my recollection I did not. I don't remember coming down town on Sunday, June 23rd, 1888, and with Thomas N. Vallins, and I going with him to the office of Mr. Aldrich. I might have gone; I don't remember. My best recollection is I did not. I do not remember receiving a letter from Mr. Aldrich asking me to call at his office, at twelve o'clock, on that Sunday. I do not remember whether I went to his office on Sunday or not. To the best of my recollection I never talked with Mr. Evans or Mr. Vallins about this case and my appearing as a witness, and about there being money in it.

I don't at the present time remember Thomas N. Vallins, but I do remember Archie Evans; he did not board at our house; he merely slept there; he was another butler. I do not remember that on Sunday, June 24th, 1888, I left my house at eleven o'clock with Thomas N. Vallens and Archie Evans, went to Bergman's saloon at 22nd street and Cottage Grove avenue and had some drinks,

when Mr. Evans left and I and Vallens took a car and rode down town to Jackson street, got off and walked west; my mind is a blank on that. I don't remember during the trip of saying to Vallens, "I am going on a fool's errand," and of Vallens asking me what it was, and my replying, "I have been going to tell you about it several times, but never got a chance." If I went on a fool's errand I should not be likely to admit it to any man. I don't remember of making any remark of that kind.

I don't remember of telling Vallens on the car going down town that I had worked three years on Michigan avenue for a family named Alexander; that Mr. Alexander was dead and the widow had married a man who was recently divorced from his wife and that now the divorced wife was bringing a suit against the present wife for alienating the affections of her husband. I don't
74 remember ever making such statement. I would not take notice of every casual remark that was made, especially dating back three or four years; there might be a hundred men I have spoken to on different matters that I would not remember them just the same as every other person might. I have never taken enough interest in this matter to talk to any one about it. I have talked about it to Mr. Aldrich and to Mr. Thompson, his clerk, who is a lawyer; they are lawyers in this case; to the best of my recollection I did not make such statements to Vallens.

After leaving the car at Jackson street and while walking west towards Dearborn street I never made any such remark as that I wanted to be a little late, as I did not want the lawyer to think I was anxious to come, as I was not going to appear in the case unless there was something in it. I never made such a remark to Thomas N. Vallins. I don't remember of taking from my pocket a letter addressed to me at No. 82 23rd street, with the envelope bearing upon the corner the printed address of C. H. Aldrich, attorney, 225 Dearborn street, the same being printed also upon the letter. I don't remember ever doing such a thing. I did not call to see a lawyer about this case on a Sunday that I remember of. I do not remember on the same Sunday of going to the building 225 Dearborn street and looking up the directory of the rooms and finding Mr. Aldrich's office to be in rooms 601 & 605. I do not remember of going to his office at all on Sunday. I don't remember of saying to Mr. Vallins I would not be gone long and his waiting for me down stairs in a saloon. I don't remember of going to Colonel Wilson's saloon on Clark street with Thomas N. Vallens, one of my boarders. I used to go there with Mr. Waldron, but cannot remember going with anybody else. I have been there more than once with Mr. Waldron; sometimes to take a drink and sometimes to take a message.

75 While going home upon the same day on my return from Mr. Aldrich's office and Mr. Wilson's saloon, I don't remember saying to Mr. Vallins, "You seem to be a level-headed, decent sort of a fellow, and I want to know what you would do if you were in my place." I do not remember riding home that Sunday with Vallins or anybody else or ever being down town on Sunday.

My duties don't let me get out. I came down town sometimes Sunday evenings with my wife, generally.

I don't remember telling Mr. Vallins at the same time that long before this suit was brought there had been some sort of a suit for insurance on Mr. Alexander's life, and Mr. Alexander's brother Charles had interviewed me, and telling Mr. Vallins the subject of my interview and what I said to Charles Alexander. I don't remember any such conversation.

I remember Charles Alexander, but only remember the conversation with him about the will—if I knew whether Mr. Alexander had made a will; that is all. I don't remember telling Mr. Vallins on my way home from down town on that Sunday that Charles Alexander was the man who was urging on Mrs. Waldron No. 1 in her suit; that after he had interviewed one in regard to the insurance Charles Alexander had gone down to La Fayette, Indiana, where this woman lived, and talked with her and had her bring this suit; so far as I remember I deny making such a statement. I never made any such statement to Mr. Vallins as that I would not tell them anything that would do them any good unless I got pay for it, even though they should subpœna me. I deny that to the best of my recollection.

I never made any such statement to Mr. Vallins as that "They are suing for $100,000, and if they get $25,000 they will tell me to go to the devil, and that is all the good it will do me."

I do not remember making any such statement to Mr. Vallins as

76 "That a man named Casperson was the coachman and that Mr. Aldrich wanted him as a witness, but that Casperson was a level-headed fellow and didn't care to be mixed up in the case unless I was, and that he would do just as I would do in the matter, and consequently that Mr. Aldrich had to work me or through me, or words to that effect;" to the best of my recollection I never made such a statement.

Casperson might have been up to my house to talk with me about this case after the suit was brought or about the time or during the year 1888. I have seen him several times and talked with him about the case, not particularly what our evidence would be. I saw him once, I believe, while we were living on 23rd street and my wife was keeping boarders. He called there one night after I got home. I cannot say exactly when. I don't remember talking with any one about my interview with him. I don't remember telling Vallins on this Sunday that Casperson was up to see me about the case the other night. I don't remember the conversation between me and Casperson. He probably called to see me about this case and I probably talked with him about our being witnesses. I don't remember what I said to him or what he said to me. I know he called and we talked about the case; that is all.

I don't remember making such a statement to Vallins on that Sunday as that "Aldrich wanted Casperson to come to his office that day, but Casperson would not do it, saying he would leave it with me as to whether we would have anything to do with it or not, and saying that I and Casperson could say a great deal if we were paid

for it, but not unless we were. I do not remember talking with Vallins on the case at all or making any statement of the kind to him or any one else. I don't remember anything of the kind as that on that same day after going home into my own house I took the photographs of Mrs. Alexander, showed them to Vallins as those of the woman I had been talking about; there were two of her photographs in the album; any one could see them there in
77 the house. I don't remember going to South park with Vallins on that same Sunday. I often went to South park on Sunday, generally with my wife.

I don't remember, after going back to the house, arranging with Vallins to go to South park together and Mrs. Kirtland saying to me, "Marius will be here between three and four o'clock to see what you have done," and my replying, "Tell him I have done nothing, and for him to use his own judgment and I will see him again." I don't remember ever making such a statement.

I don't remember on Monday, June 25th, 1888, sitting with Vallins and Evans in front of my house about 9 p. m., when Casperson came up and Vallins and Evans walked away, leaving Casperson and I to have an interview or a conference together. I have no recollection at all about it. I don't remember on that same evening making any such statement to Vallins as that I was about negotiating with the parties in the case with a view of obtaining same money for our services, meaning myself and Casperson, but that I did not think Aldrich, the lawyer for the prosecution, would want to do what was right, and if not we did not want to be mixed up in the case at all, but that we did not know what Aldrich would do. I don't believe I ever made any such statement. To the best of my recollection I deny it. I never made any such statement to him; not to my recollection.

(The COURT:) Why don't you deny positively instead of saying that you don't remember? I ask you whether you said so and so; instead of saying yes and no you say you don't remember. If you want to deny it positively say so.

(A.) I don't remember any such conversation.

(The COURT:) If you don't wish to deny it positively, but say you don't remember, say so; but if you can deny positively, then do so. That is the question he asks you every time.

78 (Witness resumes:) I was acquainted with Mr. and Mrs. Herbert C. Ayer. I worked for them as butler. I have been a butler ever since I was 16. I was born in England; have been in this country about 17 years, ten years in Chicago. I don't remember stating to Thomas N. Vallins on Friday, June 29th, 1888, at my residence in the evening, that I was a witness for Mrs. Harriet Hubbard Ayer when she got her divorce from Herbert C. Ayer, and that she could not get it without my evidence, and that the lawyer only gave me ten dollars when I had expected more. I don't remember making any such statement.

(The COURT:) If you answer the question that way the jury have a right to assume that you do not deny positively, but only that you do not remember.

(A.) I don't remember saying so; it is my impression I did not. To the best of my impression I deny making it; as I remember, now, I deny it.

I was a witness in that case of Harriet Hubbard Ayer against Herbert C. Ayer. I did not get $10 for my evidence or witness fees. Mrs. Ayer, after the decree, sent me $5 for my trouble. She sent it on from New York after the divorce. I could not state the year, but I believe I appeared in the case some time while I was in the service of Mr. and Mrs. Alexander. I left the service of Mr. Ayer some time in June, 1882. I was a witness for Mrs. Ayer and testified in that case as to facts that occurred prior to January, 1882. I don't know whether I was a principal witness or not. I was a witness. I don't remember distinctly what I testified to. I was something about Mr. Ayer drinking, about his habits, etc. That is all I was asked about.

I know Bergman's saloon; it was on the corner of 22nd street and Cottage Grove avenue in 1888. I went to the saloon when I wanted to get a glass of beer. I don't remember being at
79 that saloon about four o'clock p. m. June 30, 1888, with Thomas N. Vallins and another party and having drinks and cigars.

I do not remember being asked at that time what I was to get out of this lawsuit and replying, "Well, never you mind, it will all come out all right in the end," and "that I was confident some one would give us something for what we knew or for what we did not know." I never made any such statement.

I remember Herlan's saloon, at No. 195 22nd street. I did not state after having been at that saloon on that evening playing pool with Thomas N. Vallins and after my return home, after the others had gone to bed, in a conversation that I had heard nothing more about the Waldron case and was in no hurry to, as I wanted to hear from Mrs. Alexander—the present Mrs. Waldron—that she might be willing to give me something for my testimony. I never made any such statement. I don't remember stating to Mr. Vallins in conversation on July 5, 1888, after speaking of going into some kind of business on a small scale, that I had no money and no one would loan me any, but if I could get a few hundred dollars out of the Waldron matter I could do something, and I did not care which side I got it from, and that I would most likely get it from Mrs. Alexander, as she had a great deal of money.

During the time I was employed by Mr. Alexander personally as a valet or in his house as a butler I did not sell any articles of property belonging to him. I did sell some false teeth, gold plate, belonging to him after we returned from New York. Mrs. Alexander told me to take them away. She gave me all the teeth; there were five or six sets, probably four or five sets. She gave them to me to dispose of. She told me to take them away. I gave some of them away and I sold the gold plate; there were only two that had gold plates, the others were composition. I gave them to an ex-
pressman on Wabash avenue named Crowers, because they
80 were no good. He paid me nothing for them. I sold the

gold plates to a man on 22nd street. Mrs. Waldron did not know anything about it. She only told me to take them away.

Mr. Alexander did not wear the gold plate at the time of his last illness and death. He wore one of the composition sets. I was in Mr. Alexander's room when Mrs. Alexander took the teeth out of the drawer and told me to take them away—the room on the second floor, right at the head of the stairs—the room he had occupied and in which he had died, and I swear that Mrs. Waldron told me to take all of those plates that were there away. I don't know that there was anybody there to hear that. She did the same with everything that belonged to him.

She gave away some of his clothes that were not very much worn. Mr. Alexander gave me clothes while I was working there—that is, he bought me a suit before we went down to Louisville. Probably I had been working for him two months at that time. He bought me other articles besides.

Mrs. Alexander gave me a lot of his boots and clothes. That is all I remember. She gave away his clothes to different people. Mr. Alexander's brother, Frank, took some of them. I gave away a great many of his clothes to people that would come in her stable. I did not sell them; I gave them away. I gave one pair of boots to Marius, the coachman. Mrs. Alexander gave away everything there was that personally belonged to him, his clothes and everything. There was one suit sent down to his father, an express package. The other ones I had them mostly myself, and I gave them away afterwards. I could not wear them.

I do not remember on or about July 22, 1888, telling Mr. Vallins about making thirty dollars on the sale of the set of teeth belonging to Mr. Alexander and which I sold after Mr. Alexander's
81 death, saying that the plate was solid gold, and that I had taken and given away five other sets of Mr. Alexander's teeth after his death. I had the teeth and gave them away, but don't remember making any such statement to Thomas N. Vallins. Mrs. Alexander told me to take them away. I sold what was valuable and the rest I gave away.

I never said to Mr. Vallins that I did not think there was anything crooked about the woman, but if there was she was too smart to have any one find it out.

Redirect examination by Mr. ALDRICH:

I know that Mr. Alexander's picture was moved out of the library where it used to hang. I don't know where it went. I have never, either directly or indirectly, been promised any pay or reward of any kind by Mr. Aldrich in connection with this case; not a cent. By referring to a paper I have here I see I was mistaken in the month when I left the service of Mr. Waldron. It was September 27, 1886. This paper is a reference in the handwriting of Mr. Waldron, which he gave me on leaving his service.

If it should be found this case was commenced in June, 1888, and was first set for trial in January, 1889, and that I was sub-

pœnaed in December, 1888, I would say that I had a conference with Mr. Aldrich after I was subpœnaed, and I never made any statement to him prior to that time.

The young lawyer in his office I have referred to is named Mr. Thompson. He is a lame man.

Mr. Linnebacher, who has been mentioned as entering the house by the back way, the same as Mr. Waldron did, is a man who has lived at Mr. Alexander's house, as I understand it, for 20 years. He has his room at the top of the house—the back room. He is not in service and had no duties about the house.

I was at Mrs. Potter Palmer's after I left Mr. Alexander the last time.

82 Recross-examination by Mr. WALKER:

I left her service in May, 1887, and had entered it six months before that time. I think it was October or November of 1886. I left Mrs. Alexander's last about June or July, 1886. That was the last time I worked there. Then I worked for Mr. Waldron after that. The services rendered Mrs. Alexander after she returned from New York, a bill of which I presented to her, were rendered in March and April, and I see, by referring to my papers, that I was there later than I supposed. That was the time Dr. Ware and Dr. Charles Gilman Smith attended her, and was the time Dr. Byford was also called in for a consultation. According to my recollection that was in March and April, 1886, but it might have been a little later. It was along in April that these three physicians were called and I rendered 35 days' service and 15 nights' service. I don't think it was later than April; to the best of my recollection it might be April or May. It occurred certainly by that time, in May, her sickness. It might have been in April, possibly in 1886, and it was after her return from the East, after the burial of Mr. Alexander. I remained there up until June or July before leaving, and it was during the time I was working there after that time that the illness occurred. I was working by the day then, as I have charged in my bill.

I was in Mr. Alexander's service prior to and at the time of his death and up to February, 1886, as his nurse and valet. I charged him $5 for day and night work at that time, as I had to sit up frequently all night with him. I received $45 a month and board when I was his butler, the first time I worked with him. I rendered a bill for $5 a day while I was his nurse and valet, which was paid by Mr. Walker, the administrator. I don't remember for what length of time it was. It was stated in the bill. The bill that has been shown and put in evidence here was for attending Mrs. Alexander and was at the rate of $4 a day.

83 Mr. Waldron paid me sometimes $5 a week and sometimes $10 for my services after March, 1886. I left his service because he had not work for me in the office. I was not discharged for circulating reports.

Mr. Frank Alexander, whom I have spoken of, was the brother

of E. S. Alexander. He lived in the family prior to the death of Mr. Alexander. He was there at his death, and Mr. Linnebacher had been living there for many years in the family, and was there at the time of Mr. Alexander's death.

I don't know when Mr. Frank Alexander left Mrs. Alexander's. I went away about, possibly, a week or ten days or two weeks after he returned. I feel very certain about that. I think he was there in March and April. I think he was there until the summer, and then he went to South America in the warm weather.

84 *Testimony of Marius Kasparson.*

Called on behalf of plaintiff and examined by Mr. ALDRICH:

My name is Marius Kasparson; I was born in Norway; I have resided in Chicago near ten years and am now employed as coachman for A. Byram, at No. 2909 Michigan avenue; I have been there since a year ago last April; I formerly worked for Mr. Alexander at No. 2028 Michigan avenue; I worked there twice, the first time for about nine or ten months; I was taking care of trotting horses for him and I left there to drive a hansom cab in town, the first year the hansom cabs started in Chicago; I was driving a cab for about a year and then went to Mr. Mandel and was coachman for him for 11 months; then left there and went back again to Mrs. Alexander in August, 1885, the year before Mr. Alexander died.

I know Mr. Edward H. Waldron. I had not known him long prior to the death of Mr. Alexander. He came there while Mr. Alexander was sick, and if he was not there Mrs. Alexander would telegraph for him down to Indiana.

Mr. WALKER (for defendant): If you have any telegrams produce them. I move that the answer, that the statement of the witness, be withdrawn from the jury.

The COURT: That may be done if he should attempt to state the contents of the dispatches. He can state the fact that dispatches were sent back and forth, but not the contents of them.

Mr. ALDRICH:

Q. "What time did she telegraph to him, if you know."

A. "That would be all times. Sometimes Mr. Alexander would be better, you know, and go down town, and then Mr. Waldron would go away, and if he got worse the first thing she would do she would send me down to 22nd street with a telegram; as to the contents or anything of that kind, I cannot remember."

85 Mr. Alexander left to go South the first part of February, 1886. I took him to the depot. He returned the latter part of February and died the following morning after his return, about half past five in the morning. I can't remember whether Mr. Waldron was there at the time of his return or not. I believe he was there during his absence.

I cannot remember whether Mrs. Alexander sent any telegrams to Mr. Waldron after Mr. Alexander went South or not.

Mr. Waldron was there frequently from the time that Mr. Alexander was buried; very frequently. I don't know when Mr. Waldron removed from La Fayette permanently to Chicago. He was stopping at the Grand Pacific hotel when he first came up here. I think he was, because I found him there when I was sent with any message and I saw him there when I stopped with the carriage. I was also sent to find him at the Beaurivage flats, corner of Van Buren street and Michigan avenue. I think both before and after he was at the Grand Pacific hotel. As near as I can remember I used to take notes there to the flats for Mr. Waldron. I used to take Mrs. Alexander and Mr. Waldron for rides very frequently—every day almost—the next spring after Mr. Alexander died, but not right away. Mrs. Alexander was never out long at any time; a couple of hours, to take in the park. Sometimes he came to the house and sometimes I drove after him—that is, she got in at the house and we went down where he used to live while he was at the flats. She drove up to the front door and he got in right at the front door. We drove all over the city, sometimes south, sometimes north, but during that year we usually went north to Lincoln park. I would drive all around the park and then stop there awhile and they would get out and leave the carriage and walk somewhere. They would be gone about half an hour, not more than that. I can't remember them being away any longer.

It was in the evening mostly. I took them out at four
86 o'clock, at six, and all the time up until half past eight.

Q. You may state whether or not you knew at that time that Mr. Waldron was a married man.

(Objected to by counsel for defendant.)

A. Yes, sir; I did not, only by what I was told.

When they came home with me to Michigan avenue after driving, I used to drive around to the alley and come in the back way. He would go in mostly in front. Sometimes he would go in through the back. She would go through the back way sometimes herself; when Mr. Waldron was with her, always at the back. Mr. Waldron was there at the house very frequently; all that summer and the next fall and winter. The best part of the time, anyway, he came in through the back way. He would knock at the door, and I I would open it for him and let him in.

He got a key after awhile; that fall, I guess, after Mr. Alexander died, in 1886. I don't know how long he would stay when he came in. He used to come in at all hours in the evening, as late as nine o'clock. I have seen him come through as late as nine o'clock and probably later. I used to go to bed at 10 o'clock, and if there was nobody there after I went to bed he could not get in. I could fix the door so he could get in, but I don't remember ever fixing it so for him. I don't know how long he stayed on the occasion of these calls. If he didn't go out the front way he might stay all night for all I know. I don't know anything about it.

I got that key for him when Mrs. Alexander was sick. It was that summer after she came back from New York, I believe. I

have always had it in my head that it was in the fall or summer she was sick, but after sitting here and hearing Kirkland's testimony I don't know. That makes a different story. Of course, I may be wrong.

Mr. Waldron was there night and day during the sickness she had after she came home from New York after the funeral.

87 She was sick twice. She was sick the following summer as well. The time she was sick the first time was while Henry was there.

Mr. Waldron was there all the time she was sick. He used to ring for me and get me to go for medicines. I could find him there all the time, especially at the time she was real sick. I would be rung for and go for medicines all hours, and I could always find him in Mrs. Alexander's bed-room, night and day. I often saw expressions of regard and endearment pass between them. She used to call him "darling" and "dearie" in my presence. I have seen a good many of those kind of expressions that lovers have. I have seen him have her arms around his neck. I have seen her kiss him. That was in the house, in the servants' hall, one night going in after they had been out driving. I was going in to see to the fire or something in the house and came in right after them and saw her kiss him. He didn't say nothing that I could hear; that I can remember, anyway. This was after she recovered her health. He was there all the time.

Q. "What do you mean by all the time?"

A. "Well, I am understanding he lived there. I used to take him down-town with the horses."

Mr. WALKER (for defendant): "I object to the understanding."

The COURT: "The testimony may stand. You can cross-examine him on that."

The spring after Mr. Alexander's death they sold Mr. Alexander's buggy, and the horses he had they turned out down in Indiana somewhere, I believe, and the following fall Mr. Waldron got the horses up, and I hired a buggy from Kimball and I took Mr. Waldron down to his office in the morning. I didn't bring him home nights as often as I took him down in the morning, for I would be out driving.

88 I would take him down to his office at office hours in the morning, about nine or ten o'clock; sometimes a little before and sometimes a little later. It only lasted for a few weeks. I forget how many days I had the buggy, but I remember it well, because Mrs. Alexander thought Kimball was charging too much for the buggy and sent it back. It was a poor buggy, anyhow, and she would not keep it any longer. I guess, if I remember right, they sent the horses away and I took the buggy back.

At 10 o'clock I went to bed, and of course I did not know then whether Mr. Waldron was in the house or not at night. He might go out the front way for all I know. If I went into the house to fix the furnace or anything in the morning I would probably see him there at breakfast time, about eight or nine o'clock, according to

the time he got up. They had no regular breakfast hour; they had it at all hours of a morning. I saw him frequently all the time.

When I went after medicines I brought them into the house and took them into Mrs. Alexander's bed-room if Henry didn't come down and get them, which he sometimes did, because he was not in when I got back. When I took the medicines there during that sickness I have seen Mr. Waldron and seen Henry and the doctors, of course, there in the bed-room. I have seen Mr. Waldron there anywhere in the room. I have seen him there with a dressing-gown on in the morning after she was well again. I believe they took two trips East; the first one was some time in the summer after Mr. Alexander died.

Q. How do you know they went East?

(A) Because I had a telegram from Mr. Waldron, saying to meet them at the depot when they were coming back.

Mr. WALKER, for defendant: "I object to the statement of the witness unless the telegram is produced."

The COURT: "I think plaintiff's counsel may go on with the examination."

89 I had a telegram from Mr. Waldron. I don't know what I did with the telegram. When I went to clean up the house I picked up a lot of things and stuff and I threw it away. I have made a search for it and tried to find it and have not been able to find it. I lost the dispatch. I knew the contents of it at the time, but I could not remember it now. I have not seen it for at least two years. I don't know what became of it. I- was simply, "Meet us at the depot at 22nd street." It was dated somewhere down in Ohio. I think they had telegraphed on the way.

I met them, Mr. Waldron, Mrs. Alexander, and Mrs. Wickersham, the hair-dresser. I can't recollect how long they had been away from home at that time. It was somewhere along about three weeks. I took them to the train at the time they went away. I took Mrs. Alexander and Mrs. Wickersham to the depot and I saw Mr. Waldron there, but I did not take him down. I don't know whether he went on the train or not.

I can't remember when was the next trip they made East. I have been trying to think of that, but I can't remember it. I was not there after the marriage. I left there soon after Mr. Waldron got his divorce, a couple of months before he got married. The second trip East was before I left. I would not know anything about it if it was not. I don't know much about it, anyhow. I can't remember it.

I left there in August, 1887. I got discharged by Mrs. Alexander. The trouble was I took Mrs. Alexander and Mr. Waldron over to Lincoln park on a hot day, and when I got there she left me and I stayed there in the shade; and we had a horse that when he did not like to go he wouldn't go for a minute, and so I pulled my whip out and I hit the horse; and Mr. Waldron said, "Are you going to expose us in the park?" I answered, "I ain't going to ex-

pose you. I wanted the horse to go." I could not make him
90 go for awhile, and the horse was hot, and he was a nasty horse that way. He was a good horse, of course, but he would stop once in awhile and you could not get him started right off. That was the only trouble I had

I was there for three weeks after that, and I used to go in and ask her every day if she wanted the horses and she would say, "No," and tell me no more. Finally I got tired of it, and I went in one day and asked her if she was going to take the horses from me any more at all. She says (No). I says, "Why didn't you tell me that before and not keep me around this place like a fool? You might as well told me that in the first place." This was all that passed so far as I remember. I left her service then.

I don't know of any other callers on Mrs. Alexander having latch keys and coming in the back way through the barn, except Mr. Linnebacher and Frank Alexander. Everybody in the house went through the barn, so there were lots of them went through, but no one had keys except them. Mr. Waldron's office to which I spoke of taking him was in the Adams Express building, I believe, and later on it was in the new Phœnix Insurance building, opposite the Grand Pacific hotel.

Q. You may state if you know how and by whom that office was furnished.

Objected to by counsel for defendant.

Mr. ALDRICH: "I propose to prove that Mrs. Alexander sent furniture from the house; that Mrs. Alexander furnished the office at the time she knew he was a married man."

THE COURT: "If that is the purpose you may go on."

A. There was about an express-wagon load of furniture went down there; a one-horse express-wagon load; furniture that had been stored, and there were some pieces that were taken out of the house. I saw that furniture afterwards at the office.

91 Q. Something has been said here about Mrs. Alexander giving away the effects of her husband. What, if anything, do you know about it?

A. Well, when Mr. Alexander died I got a suit of clothes and a few pairs of pants and some shoes, and afterwards I got a couple of chairs. I got a fine rocking chair that used to stand in Mr. Alexander's bed-room, among other things; that is all I got.

Q. Do you know what became of Mr. Alexander's picture?

A. "No, sir; I don't. I heard she had given it away, but I don't know."

Q. You may state what, if anything, you heard her say about what she wanted to do with Mr. Alexander's things.

(Objected to by counsel for defendant as immaterial and irrelevant.) Objection overruled by the court; to which ruling of the court counsel for defendant then and there duly excepted.

A. "Well, I don't know. I didn't hear nothing about things in general; only what I got myself. When she took and gave me this

chair she says, "You can take it out in the barn, Marius, because I don't want to have anything that has been around in this room belonging to him in here." That is all I know about it.

Cross-examination by Mr. WALKER, for defendant:

I was discharged two years ago last August for whipping the horse, but I didn't abuse him. He was abusing me. My habits as to drinking were good, I think, as excellent as most people I know. I was only charged with drinking by Mr. Waldron. He said something about it, but I think I was a great deal soberer than he the most of the time. I don't think anybody else had anything to do with my discharge but Mr. Waldron. He said I was drunk when I was whipping the horse, but he could not say I was drunk that day. I was treated good by Mrs. Alexander, but not by Mr. Waldron, because he was the cause of my leaving there and I don't owe Mr. Waldron any hurt. I know he was the one who caused me to be discharged.

92 Mrs. Waldron did not say that I whipped the horse too much. This was a question that day of course. I recollect that carriage horse. He was a very fine horse when he wanted to do anything. He was one of those fine horses brought up from Kentucky. I drove the pair for two years except a few days.

I did not get that horse so he would stop and balk. He was that way before I went there. He was a balky horse when I worked there the second time. The first time I was there I helped get him up from the floor. He laid down and would not get up. That was during the lifetime of Mr. Alexander, and Mr. Alexander knew it himself. It was very seldom that he did stop; not often enough for anybody to notice it. He didn't stop as many times for me as he did for the man who was there before me and as he has done since.

The horses were sent out to the country before I was discharged a little while. There was not a pair of horses for me to drive for a couple of days before I left. I don't know where they were sent and how long they were away, because they were not taken back while I was there. I always felt very kindly towards Mr. Waldron. I think he was the means of having me discharged. That is the only thing I have against the man. He was always good to me before that. I don't know as he has done me any great kindness, and he never did me any harm before that. I never said I would get even with him for discharging me. I never said it to the present coachman of Mrs. Waldron. I don't know the man. I have spoken twice to him since I left there; it was in Mrs. Alexander's barn. I went in there to see him once, and I have spoken to him once outside. I never said a word to him about this case or that I would get even with Mr. Waldron for discharging me. He is not the man I would say that to, because I don't know him well enough.

I don't know the name of that coachman. It may be John Wil-

son, but I don't know him by name; I know the person. It
93 was once after I left there in the winter that I went there again and spoke to Mrs. Alexander's coachman twice. She is Mrs. Waldron now. I never had any conversation with him about the case. I never said to him that there had been two thousand dollars raised to pay for the testimony in thos case, and that I had been paid five hundred dollars, and that Henry was to get $500, but had not got it yet. I did not get it. I never got a cent nor the promise of it. I could not raise $500. I did not see the man to say it to him. I never said it to him or any other man. I have only seen him twice in two years to talk to him as far as I can remember.

I drove a cab three or four months in 1885 before I came to Mr. Alexander. I was there at the time Mr. Alexander was sick—during his last sickness. Mr. Waldron was there a good deal of the time while he was sick—the winter that he died. He came there after Christmas. That is the first time I ever saw Mr. Waldron. I was there the fall before Mr. Alexander's death and the fall after.

Mr. Alexander went to New York three weeks before Christmas, and he came back from New York sick, and he was sick more or less until his death. He was away some days. During that winter Mr. Waldron was there at the house off and on; quite often when Mr. Alexander was sick. If he was not there Mrs. Alexander would telegraph for him to come. Mr. Alexander was living, and she would telegraph to Mr. Waldron to come up during his sickness. I took a couple of those telegrams to the station on 22nd street during Mr. Alexander's sickness the same winter he died. It was before he went down to Louisville. I don't know that these telegrams were written by Mrs. Alexander. I did not write them. They were open, and I could read them. I had no instructions not to look at the telegrams. I took them open to the telegraph office and paid for the messages to be sent to Mr. Waldron. Sometimes he came up in response to these telegrams. I don't re-
94 member exactly how many times I saw him there in the winter of 1885 and '6. I did not keep any track of them. I never thought it would come to any such thing as this. I am not paid to keep dates nor for coming down here at all. I got a dollar and eighty-five cents, I think it was, witness fees, twice, and I pay $2 a day for a man to take my place; so I am out of pocket.

I remember well when Mr. Alexander went down to Louisville. Mr. Waldron was there during the time Mr. Alexander was at Louisville, but not to stay there. I can't say how long he was there. I know he was there. That is my recollection.

I don't remember when he came after Mr. Alexander's death, but it was between the death and the funeral. He was there at the funeral. The funeral was at the house. There were plenty of Mr. Alexander's friends there at the funeral. Then the remains were taken East for burial. I was down at the depot with them.

It might have been some months after when I was taking notes for Mrs. Alexander to Mr. Waldron. He was not there at the house so much then. When I took notes down to Mr. Waldron I didn't

take reply notes back to Mrs. Alexander. Henry would take them back generally. I would take the notes down and Henry would take back the answers.

I used to take notes to others. I took notes to Mr. Walker lots of times. I do not think as often as I took them to Mr. Waldron. I was in the habit of coming to Mr. Walker's office pretty near every day, and I was outside on the carriage. I used to come to Mr. Walker's office sometimes with notes, but it wasn't so very often. During the entire summer it might be twice during the week and then not at all the next week and then two or three times the next week after.

I took Mr. Waldron and Mrs. Alexander out driving about every day when it did not rain. I don't mean to say they went
95 every day for the whole year round when it was fine, but when he was in town he was generally in the carriage with her for a couple hours every day, both in the victoria and the brougham. I did not always have the victoria. I went out driving during the summer with the brougham lots of times. I used to drive down to the Beaurivage and not only there but down to Mr. Waldron's office. I went down there with Mrs. Alexander and fetched Mr. Waldron away from the office with the brougham lots of times in open daylight and in the presence of everybody out in the streets and in the evening as well as in the daylight. There was no concealment about it in any way that I could see. There cannot be in the streets of Chicago. I went up there when I went out with Mr. Waldron just as I would drive to any other house, in front of the house, and he would come out and get in. It was pretty near always the custom to drive to the stable when I went home.

Mrs. Alexander was driven up to the stable very often and Mr. Alexander very often, before he died, more often than anywhere else. He used to come in there at night coming home.

Mrs. Alexander, before the death of Mr. Alexander, and after his death, was in the habit of coming to the stable very often, looking at and petting the horses, more so than any other lady I ever worked for. A good many times she would come out to the stable and get into the carriage. I would drive her off and I would drive her home. She would get out of the carriage in the stable and go into the house. She has done that very often, and did that way at times when Mr. Waldron was riding with her.

I never saw any one else but Frank Alexander and Mr. Linnebacher go in the back way through the stable when calling at the house, outside of Mr. and Mrs. Alexander.

Mr. Linnebacher came there, I have heard, 28 years ago, and I used to think he seemed to be a fixture there. I believe he
96 is there yet. He was there when Mrs. Waldron was so sick and he was there while Mr. Waldron was in the house. Mr. Linnebacher is a nice gentleman. He has never done me any harm. Frank Alexander was there too. Sometimes he went through the stable. There was nothing very suspicious about that. He was his brother.

When Mr. Waldron went through the stable he never told me

not to tell of it; he went through openly, through the kitchen where the girls were. The back door going into the house was sometimes open. After he got into the house he had two ways of getting upstairs. He could go through the basement hall and get upstairs, or go up the back stairs. I don't know which way he did go. He had to go through the servants' dining-room and through a little hall and through the kitchen and through the basement hall.

Where I saw him and Mrs. Alexander was in the servants' dining-room. That was the first room you got into from the yard into the house. I was coming in behind them. They had pushed the door to after them before I went in. I pushed the door open and went right in. I think the door was open between the kitchen and that servants' dining-room. I think that door was taken off. They had come from the carriage. I don't remember for what purpose I went in; perhaps to look after the furnace. I had to run the furnace. I left my horses and carriage standing there and followed those two people into the house and saw what I have stated with the door between the kitchen and this room wide open. I think the door was taken off so it could not be shut. There was a cook there in the house. I think it was a little girl Mrs. Alexander got from Cudahay's and I forget her name. I don't know where the girl is. There was a laundress. I don't know whether she was there or not. There were four girls there. I think I saw the cook going through the hall down to the furnace. I met her on the steps coming down.

She had to go down there for kitchen coal, and I believe I
97 met her with the coal-scuttle as I was going in. I could not swear that the cook saw the kissing going on. If she was in the kitchen there was nothing to prevent her seeing it. This was in the evening. I could not tell you the time. It was dusk, but I could not tell you the month. It was in the fall of the year, this year after Mr. Alexander died in the spring. I could not remember the month. I was there until August, 1887, the year after Mr. Alexander died. It was in the fall of 1886 I saw this in the servants' dining-room.

It was dusk both out of doors and in the house, and a little more so because that basement is rather dark. It was between five and six or between five and half part in the evening, in the fall, but I can't fix the month. I don't know as I told anybody about it. I might have told Mr. Aldrich. He asked me what I knew about the whole thing, and I told him. It was after I had been discharged by Mrs. Alexander. She had always treated me very kindly until the time she discharged me. I told Mr. Aldrich any general facts that I saw. He held out no inducement to me whatever. I was subpœnaed down here before I saw Mr. Aldrich. I had seen a man by the name of Thompson connected with Mr. Aldrich's office before, a lame man. I saw him in Mr. Byram's barn one time. He went down there and talked to me about it and asked me what I had seen of an improper character between Mrs. Alexander and Mr. Waldron. I told him I would have nothing to do with it; that I would not be mixed up in it, and did not give him any information whatever.

The first time I was subpœn-ed down to this court or to some other court I cam- down here and there was no trial then. There was no court there and I went over to Mr. Aldrich's office. I had never been in it before, but I had the address on Mr. Thompson's card and I went over there to Mr. Aldrich and that was the first time I saw him or told him about this matter.

98 I have heard Mrs. Alexander call Mr. Waldron "Dearie" innumerable times all over the house where I saw them together and in the stable. That is what she called him always. I never heard her call him that in her bed-room. She was not sick at that time. He was staying there. There was no secret about it as regards me. She knew I was in the room.

Mrs. Alexander gave me two chairs, and she gave me a suit of clothes of Mr. Alexander's—the suit that he had on when he came from Louisville—that was all spoilt and I got it. Mr. Alexander gave me things of that kind in his lifetime quite often.

I was married while I lived there, after Mr. Alexander died. We lived over the stable. I took my wife there and we lived there until the fall of 1887, from June, I believe. One of these chairs was in the room where Mr. Alexander died, and Mrs. Alexander said she did not want to keep that there any longer. She said, "Marius, you can take this out in the barn; I don't want to have anything of his around here," or something like that is what she said to me. This was immediately after his death, and she said something about its bringing to her sad recollections. I supposed it was on account of the said recollections she wanted them removed.

I didn't take the things down to Mr. Waldron's office. I helped carry it out, and it was put on the express wagon. I know it was taken to Waldron's office. I saw it there afterwards. I don't remember how much there was; it was not a very heavy load, but there was quite a few things there; *I* few old articles of furniture. I believe one or two things were not used in the house. There was what we call a dumb-waiter there to hang your hats and things on. Something like that. It was down in the lower hall. That was what we used to call a dumb-waiter in the old country. I don't know what you call it here. It was for persons to hang hats and coats on. I believe it was taken to Waldron's office. I think

99 I remember carrying it out on the sidewalk and the expressman putting it in the wagon. I saw a dumb-waiter in Mr. Waldron's office. I cannot remember any other articles now that were taken to his office. Mrs. Alexander brought Mr. Waldron up in the loft in the barn and she showed him some old furniture that was stored up in the hay-loft over the room that was built there, and asked him if there was anything there that he wanted; some old things that had been taken from the house and had been there all the time I was around the place, but I cannot remember exactly the articles that went down there.

Redirect examination by Mr. ALDRICH:

Mrs. Alexander used to sit in her bed-room most of the time. That room was always kept for sitting in all the time. There was a bed in it in the kind of a place they call an alcove in the room. There is a hell there with a separate door into each room from the hall. I don't remember of any changes being made in the passage-way before I left there.

Q. You have told us something about words of endearment and loving acts you have witnessed there. You may state whether or not you ever saw anything between Mrs. Alexander and Mr. Waldron of a contrary character.

A. No; I can't say I did.

Q. When Mrs. Alexander was crying and on her knees before him?

Mr. WALKER: Now that Mr. Aldrich has told you what he wanted, you can answer it.

A. I saw her get up and he sitting on a chair once. They were in the bed-room close by the door, and I saw her get up from in front of him. She had been crying.

I came stepping right in there, and I knocked at the door, and I guess she heard the tap, and I think she called out and I went right in.

100 Recross-examination by Mr. WALKER:

This bed-room I speak of was the front room that Mrs. Waldron now keeps as her sitting-room, her family-room. She was always there unless there were visitors there—ladies calling on her—when she would go down in the parlor, of course, and very often ladies went up there. It is a large room. I understand that it is a family-room, a sitting-room. She was always there unless somebody called to see her. The most intimate friends she had would always go up there. I have seen many there. I have seen Mr. Walker, her attorney, there as well as many other friends of Mrs. Waldron.

101 *Testimony of John B. O'Neil.*

Called on behalf of plaintiff and examined by Mr. ALDRICH:

My name is John B. O'Neil. I reside at 206 31st street and am an electrician doing business on my own account. My shop is at No. 262 31st street. I knew Mr. E. S. Alexander. I used to do his electric work at his residence—repairing batteries, electric bells, etc., for the electric wires that ran through the house. I did the work there after Mr. Alexander's death right up to 1887.

I know Mr. E. H. Waldron to see him. I have seen him at the Alexander house: the first time was shortly after the death of Mr. Alexander, and I have seen him there several times afterwards. I have seen him go through the house. I have seen him in the dining-room, in the parlor, and in the hall, and I have seen him go through

the barn once and through the kitchen once or twice, and going through the halls, upstairs and down-stairs.

The first time I saw him in the hall upstairs was one morning very early, probably a little after eight o'clock. He went through the hall that time. The hall was very dark. I was repairing the batteries and was in a little closet. Mr. Waldron came up and heard some noise there. He looked in and says, "Is that you, Annie?" and I says, "No; this is O'Neil. I am fixing the batteries," and he passed on. I don't know where he came from, but I heard the door east of this closet open. I don't know who occupies that room where I supposed I heard the door open, but the room next to that I know is Mrs. Alexander's room. He was in his night shirt at the time and passed right on and went west through this hall. As near as I can judge, he went into the room right next to this little closet. I know Frank Alexander used to occupy that room when he lived there. This was in the spring of 1887. It was cold weather. I don't exactly know the month. I have seen Mr. Waldron there during that same summer when we were fixing
102 the house over. He came there one day in the carriage, I believe, when I was working there.

I had been working there then, I guess, two or three days, repairing burglar-alarm wires—changing them. This was after Mr. Alexander's death. I think it must have been in June, 1887. I had no conversation with Mrs. Alexander at that time, except about the work I was doing.

Mr. Waldron came in a carriage some time in the forenoon; I don't now remember exactly what hour it was. I don't think there was anybody came with him. They drove the carriage up there and he came in. I don't remember whether they had a drive or not. After coming into the house he talked with Mr. Alexander and Mrs. Studebarker, another lady who was there at that time; then they went upstairs—Mrs. Alexander, Mrs. Studebaker, and Mr. Waldron. In a short time after that Mrs. Studebaker came down from upstairs. Then I went up to go into the room, and it was locked. I had been in the room before that time that morning.

I could not tell how long the door was locked; probably half or three-quarters of an hour, or something like that. I did not see who came out of the room when it was unlocked. I worked down in another part of the house and went up there to go into the room, and it was locked. Then I went down to work in another part of the house, and after half or three-quarters of an hour I went back, and I went in there. I didn't see Mr. Waldron after that. I don't remember anything about the condition of the bed on this occasion.

On another and different occasion, I should judge in September, I was working there again. The wires got crossed, and Mrs. Alexander sent for me and told me she wanted me to get through with it, as she had company coming the next day; and I could not get through. The next morning I went down there to finish up the work, and asked one of the girls if I could go upstairs. "Yes,"

they said, "Mrs. Alexander has gone down to the depot to
103 meet a friend." So I went upstairs then to work, and came down and went back to the barn, and during this time Mrs. Alexander came, and Mr. Waldron also, and then went upstairs. I was running an extra wire out to the barn for the barn bell, and I went up to try it. Some one heard me coming through the hall, and they locked the door; so I had to wait about half or three-quarters of an hour on that occasion before I got in. I had been there in the room before on that morning, and when I was in the room the first time the bed was made up—the room was all made up. After they came out of the room, when I went in the second time that morning it looked a little bit mussed, like somebody had probably sat on it, something like that.

Cross-examination.

By Mr. WALKER, for the defendant:

I worked in that house in 1887 and in 1886, I should judge probably three or four years before Mr. Alexander died. I had charge of the electric bells in the house before the death of Mr. Alexander, and after till September, 1887. I have not had charge of the bells since that time.

I don't know what month it was, but I know it was cold weather in the spring when I went there at eight o'clock in the morning to repair the batteries. They were in a little closet on the second floor off from the hall. Just as you come up to the head of the front stairs you turn a little bit to the left and cross the hall to this closet, and across the hall from the top of the front stairs, and near to them, is a door leading from a large room, a sleeping-room; then east of that is the other room, the one I have spoken of as Mrs. Alexander's room. That was next to the closet. The water-closet was between this little closet where I worked and kept the batteries, and this room Frank Alexander used to sleep in. To get into this room Frank used to occupy you turn a little to the left from the head of the front stairs and go west through the hall into the room.

104 There were no windows in this closet where I was at work. I always used to have a candle when I worked there. The closet, I should judge, is about four feet wide and probably about six feet deep, and the batteries were under a little sink in the closet; while working on the batteries my back would be towards the door of the closet—that is, my back would be to the hall; there were no windows to lighten the hall except a skylight through the roof up above the third floor. I was on the second floor; the house is three stories and a basement. I don't know whether there is an attic above the third floor or not; the skylight was some distance above the hall on the second floor where I was at work; scarcely any light at all came into this hall through the skylight; they used to have a gas-light in the hall pretty much all the time; on that morning the gas was there burning a little bit, but it was turned down very low, as they had left it burning in the night. I think the gas-

light came as far as the closet where I was at work. I think the gas-jet was right close near the closet; it was a little bracket light, I know. I am not positive whether it was near the closet or between the front room and the room back of the front room, but I think it is right close by the closet. I know it always had a white globe on it. I am almost sure the gas was lighted that morning, for this reason: It was always dark in this hall any time I went there; even in the middle hour of the day the gas used to be lit in the hall; it was always kept very dark in that hall, and I have seen the gas lighted there in the middle part of the day; this light never used to help me at all to furnish light for my work in that closet. I relied entirely on the candle.

I was busy about my work when I first heard this voice inquiring, "Is that you, Annie?" with my back to the hall at that time. I was busy about my work when I heard the door close. I could not tell whether it was one door or the other that opened
105 or closed only by imagination, as anybody would, and I could not swear it was the door leading to Mrs. Alexander's room, only just as I say. I imagined, if I heard the door closing next to me, it would be her room—her door; there was a door nearer to me than her door. I don't speak from knowledge at all, but just as I imagined as to which door it was.

I had not seen the person whom I saw in the hall before in the house that morning. I answered it was the electrician who attended the batteries. I did not turn around to have any conversation with him. I never spoke to the gentleman before. I turned around to look at him. I could not say how tall a man he was; I should judge it was a man about my size, and I am about five feet eight, I believe. I had not spoken to Mr. Waldron before that time. I had seen him several times there in the house—going through the house.

When I turned around that morning to look at him he was standing right near the front door. As far as I remember this gas-jet was a little in front of him yet—west of him—I could not say that positively, either. It was probably not a moment that he stood there, and he said nothing further to me. He said, "Is that you, Annie?" and I said, "No; it is Mr. O'Neil." "Annie" was a girl that worked in the house and, I believe, had charge of the rooms on that floor; and this gentleman, whoever it was, spoke to me as "Annie." It was dark, and he could not see. I suppose he thought probably some burglar or somebody was in the house, and that is the reason he spoke. He was in his night shirt. I think I could say positively now that it was Mr. Waldron I saw there; I think I can identify him positively as being Mr. Waldron. I don't know as I had seen any other man about there at that time—only the coachman—on that morning. I don't believe I ever knew Mr. J. C. Guthrie or saw him about the house—either Mr. or Mrs. Guthrie. I saw Mr. Waldron here yesterday and I saw him here
106 this morning in this court-room. Prior to that time I have seen him driving on Michigan avenue last summer, and I

have seen him not very long ago in a carriage with Mrs. Waldron, the defendant.

I don't think I have seen Mr. Waldron within the last two months or six weeks; I should judge it was probably two or three months ago, the last time I saw him on Michigan avenue in the carriage as I stated. It was not so dark in the hall but what I could recognize him, because I have seen him about the house before; of course, in a closet under a sink I had to have a candle to work by; I could not have done my work in the hall there that morning without a candle or additional light; I could not do it in this room even; batteries are a particular thing to handle; you have to have light to see them; if the batteries had been in the hall I would have had to use a candle to do the work; he did not stand a moment in front of me there after he spoke and I turned around; he seemed to be passing along. He spoke and he says, "Is that you, Annie?" and I answered and turned around to see who it was; I am pretty sure he stopped; he must have stopped when I turned around to see him.

The way the thing occurred, I heard a noise coming through the hall; I heard a door open, and I heard like some one coming through the hall the first thing; I hadn't found my candle; I hadn't found my light; I had just got in there and was poking around looking for a match and the candle I had under this closet. Just then there was a light seemed to be reflected in there in the closet, and then I heard a man's voice say, "Is that you, Annie?" and I just turned around and I said, "No; this is O'Neill; I am fixing the batteries;" I just turned my head that way; I don't think I turned my body clear around to face the door, because I was probably down on my knees at the time working under this sink, getting ready to prepare the batteries, with my back toward the door.

I heard a door close in the hall somewhere, either one or
107 the other, as I imagined, and this person says, "Is that you, Annie?" and I said: "No; it is the electrician; I am repairing the batteries." I could not exactly say whether this man was in front of the door when he inquired if it was "Annie" or whether he was a little east of the door; I know he was in front of the door when I saw him; I didn't take any particular pains about it; I just turned my head and looked at the door; my attention was attracted by the voice and this inquiry, and I turned my head and looked, and this person passed right by the door and on through the hall towards the water-closet, or some other room off that hall; he stopped at the door; was standing by it when I looked around; I think he did not stand there an instant; just as quick as I turned around and spoke he passed on; that was all there was to it; it would not be more than a moment's time; he could have looked in the door, but he could not see who was there, because it was dark; I don't think he could tell whether it was a man or a woman, because it was dark in that closet, and there was not very much light in the hall; a very dim light. He did not hurry and did not seem to be at all disturbed at finding a man there working at the battery.

I don't remember meeting Mr. Waldron on La Salle street in broad daylight within two months; I don't know that I ever met him down town, only seeing him in the court-room. This gentleman is Mr. Waldron (indicating). If I should meet him on the street I presume I should know him at any time. I could identify him a great deal easier in the street in broad daylight than I could in a dark hall.

I know Ed. Dreyfuss, but not very well; I know him by sight. I remember being in a saloon with Mr. Dreyfuss a few weeks ago; I have been in there two or three times; one time I remember it was about twelve o'clock, noon; I didn't talk very much with him about this case. The place is called the Saint Cloud saloon.
108 Mr. Waldron was not present; if he had been present or had stood near me I believe I would have recognized him. At that time there were a good many in the saloon. It was about noon and they were in there getting lunch. I was getting a little lunch myself at that time with Mr. Dreyfuss. I had been at Mr. Walker's office with him and went from there to have lunch that day. There were a good many in the saloon at the time I was there. I was there on two or three different occasions; one time on a Sunday with a friend of mine. I have not seen Mr. Waldron there on either occasion; I never saw him in that saloon. I believe while I was there that day about noon Mr. Dreyfuss was talking to some man, but I didn't pay any attention as to who it was; I don't know whether I looked at the man or not; I saw him talking to somebody and I didn't pay any attention to the man; I presume he was standing close to me. Mr. Waldron was not there to my knowledge and I didn't recognize the man Mr. Dreyfuss was talking with.

I don't remember the month when I was working there in the spring. I was also there in June of the same year; I believe it was June. I have a book showing when I worked at Mrs. Alexander's, but have not refreshed my recollection by it; I am merely stating my recollection as to the time. They were fixing the house over and I worked there two or three days. I could not say how long they were fixing the house; they had it all torn up; but my work took two or three days. I went to Mrs. Alexander's room on the second floor at that time; it was the front room, a large room with an alcove and the bed stood in the alcove; it was the room occupied by Mrs. Alexander as a sitting-room very generally and used by her more than any other room in that house so far as I have any knowledge. I have always seen Mrs. Alexander in that room and have seen other people there with her. I have worked there at times and seen her have company there. There were ladies
109 there who were not members of the family. There were no other ladies in the family or in the house aside from Mrs. Alexander, and no child.

As far as seeing anything that attracted my attention at that time I didn't see anything, only that I saw Mr. Waldron come there and go upstairs with Mrs. Alexander and Mrs. Studebaker. Mrs. Studebaker was a married lady, a friend of Mrs. Alexander's,

Waldron. I didn't pass much remarks on him or any other man, because there are a great many men go in there. I didn't keep any date of that or anything like it, and I could not tell you the year either; it was after the death of Mr. Alexander; it might be five or six weeks after his death. I used to see Mr. Waldron perhaps between nine and ten in the morning sometimes going away. That is about all; and it might be five o'clock, half past four or five, in the evening that I saw him. I am not positive. I didn't keep track of them because I was a disinterested party. I saw him several times. I have not the dates or anything like that. When he came to live there and got married I didn't keep any track of him at all. I didn't keep track of him, but it drew him to my notice a little; that is all. It drew my attention a little. I could not tell the time and I could not tell the date, nor anything else. I didn't keep any entry or anything like that, and didn't want to be implicated in it anyway. As far as it was concerned, I tried to keep out of it as well as I could.

Cross-examination.

By Mr. WALKER, for the defendant:

I tried to keep out of coming into court as a witness in such a case. I didn't want to come into the court on any occasion if I could help it. It was a lawyer, Mr. Boyden, I expect, who
113 asked me to come here—this gentleman (indicating). He came to see me in my stable at Captain Averill's. There was nobody with him when he came there. He called twice. He asked me what I had seen going on at Mrs. Alexander's and how often I had seen Mr. Waldron. I was not watching Mrs. Alexander. I was not keeping watch on any personal at all. I would not want to be that way. I have been with Captain Averill fourteen or fifteen years.

I know Marius, the former coachman of Mrs. Alexander, to speak with him. He was not with the lawyer. I told the lawyer I wanted to be let off. I didn't want to be a witness here. I told him I didn't know anything about it at all, about the business, and if they would take me I could not do him any good, nor any harm, and to leave me at home. Then he said he would go and see his partner and subpœna me and bring me, and so that settled the question because I was compelled to come. I don't know anything about it.

Mr. Waldron did not attract my attention very much because there was a passage-way there for grocerymen and butchermen and all other men who go in and out of there, and I didn't pass much remark on Mr. Waldron going in there. I don't remember to have seen Mr. Waldron with Mr. E. S. Alexander in his lifetime.

I have seen a great many others go in and out of there through that stable, and have seen the carriage drive away with other gentlemen and ladies. I know Mrs. Alexander went in there, and it was not an unusual thing for the gentlemen to pass through the house to the stable. It is the nearest and most convenient way, when you come down Wabash avenue on the cars, to go into the house,

to go right through the stable. It is the shortest way. I have seen several other gentlemen callers enter that way. I could not tell who they were—horse doctors and other men of business, and everybody else—strangers; any man strange in the alley where I live and who is dressed up as a gentleman. I could not state his business. I don't inquire what his business is
114 or what his name is. I merely saw him; that is all. Some trade-men and people who had business in the house or lived in the house most generally went in there that way.

Testimony of John W. Duke.

Called on behalf of the plaintiff and examined by Mr. ALDRICH:

My name is John W. Duke. I reside at 2032 Michigan avenue, and have been there between three and four years. I am in the employ of Mr. R. L. Henry. His premises are adjoining Mrs. Alexander's premises on the south. Mr. Henry's premises are on the corner of 21st street, between Mrs. Alexander's premises and 21st street. I know Mr. E. H. Waldron. I have been personally acquainted with him the last two years. Prior to that time I had seen him, but not to know him. I have seen him passing by my barn door. He would go and come through the alley to 21st street—coming from the next barn sometimes. Sometimes I would see him coming from there and sometimes I could not tell where he came from. I went to work for Mr. Henry in October, 1886. Shortly after that I first noticed Mr. Waldron. Sometimes I would see him for a day or two at a time; other times I would not see him for a week. I should judge it would be about eight or nine or ten o'clock in the forenoon—somewhere along there—that I would see him. I have seen him in the carriage go away from there in the morning. I could not tell where he was driving to. I think the time I saw him in the carriage was in the forenoon, about 1887. I could not say how often he was there exactly, only just seeing him there sometimes, as I say, and would see him for a day or two regular, and at other times I would not see him again for a week. I would have to drive out and would not be there.

Cross-examination.

By Mr. WALKER, for the defendant:

I was not keeping any special watch on Mr. Waldron and his go-
ings and comings or his business. I simply observed him as
115 I would observe anybody else going through that stable and past that door. He was not the first gentleman I had noticed going past my door to Mrs. Alexander's table. It was a frequent occurrence that gentlemen would go in and out through there into the house. I have seen a great many go in there. I never paid any particular attention and was not watching where they went.

I have seen Mrs. Alexander drive past my door. I was not there

when Mr. Alexander was living. I have told all I know about Mr. Waldron and about this case. The first time I was spoken to about the case Mr. Henry spoke to me shortly before I was subpœnaed. I don't remember the date. It was about the time the trial was first set, as I remember—the first I had notice of it. Mr. Henry asked me what I knew about the case, and I told him I didn't think I knew anything about it, only seeing Mr. Waldron. I told Mr. Henry I had seen Mr. Waldron, and that is about all I told him. He didn't ask me anything about it particularly, only he asked me if I had seen Mr. Waldron. I told him I had, and he handed me a letter to take down and see Mr. Boyden, and told me to go down there. He said to me, "Here is a letter you take down there and see this gentleman." I found Mr. Boyden in his office. I saw Mr. Aldrich afterwards, and I talked to Mr. Dexter about the case after I was subpœnaed.

Marius Casparson was the coachman that drove Mrs. Alexander and Mr. Waldron. I never talked to him about the case. I don't remember that I saw him after that, only as I would see him on the carriage and probably met him on the street, until we came down to the trial. The only conversation I had with him on the way down to the trial was that I was subpœnaed as a witness. He never stated anything to me about the case. He said he was here on the case. I know the present coachman of Mr. Waldron. His name is John Wilson. I believe I came down here the 13th of this month, when the case was first set for trial; somewhere about
116 that time. I had a conversation with John Wilson and about Marius. We generally talked to each other, not about this case particularly, but anything we might speak of, and that day or evening I told him I was subpœnaed on this case, and that I had met Marius down here, and he had told me he was a witness on the case, and that Marius had said Mr. Waldron was the cause of getting him out of there.

By Mr. WALKER:

Q. I ask the witness if he did not, on the evening of the 15th, in talking with the coachman, John Wilson, about this case, say to him, "Marius said that he had no fault to find with Mrs. Waldron, but that he would get even with Mr. Waldron in this case"?

Objected to by plaintiff.

The COURT: I do not see that it is any part of the cross-examination of this witness, and you have not laid the foundation for contradicting Marius in this respect.

Mr. WALKER: It is to lay the foundation to contradict this witness only. He has said he had no conversation with Marius about the case and didn't repeat to Wilson what Marius had told him about the case.

Which objection was sustained by the court.

117 *Testimony of Mary A. Waldron, the Plaintiff.*

Examined by Mr. ALDRICH in chief:

My name is Mary A. Waldron; I am the plaintiff in this case; I was formerly the wife of Edward H. Waldron; I reside in La Fayette, Indiana, and have lived there for 30 years, perhaps longer.

I was married to Edward H. Waldron on September 17, 1865, at my uncle's residence in Syracuse, New York, at the time my home was in La Fayette, where I was living with my mother, Electa Russell, and my brother, Virgel Russell. My maiden name was Mary A. Russell, but at the time of my marriage to Mr. Waldron my name was Mary A. Beauchamp.

At the time of my marriage to Mr. Waldron I was carrying on a millinery business at La Fayette. I was the owner of the business and could consider myself worth between $4,000.00 and $5,000.00. I continued to conduct the business for three years or perhaps longer after my marriage to Mr. Waldron.

One child was born of our marriage—a son. His name is Williard Winfield Waldron. He is here in the court-room (identifying him). He was born in June, 1869. I may be mistaken about the date of his birth.

I continued to be the wife of Edward H. Waldron for 22 years, up to 1887. At the time of our marriage he was clerking in the office for the "Monon" railroad and was receiving a salary of $55.00 or $60.00 a month and was boarding in our family in La Fayette, Indiana, and had been boarding with us a good part of a year. When he first came to the house he just took his meals there; later he and my brother occupied a room in the house and so continued until we were married.

Soon after our marriage Mr. Waldron received promotion and continued in the service of the Louisville and New Albany
118 road ("Monon route") for four or five years, when he severed his connection with that road and engaged with the parties who were building the "Kankakee line," between La Fayette and Kankakee, Illinois, and was with that line between four and five years.

From the C., I. & St. L. road he had a salary of between $5,000.00 and $6,000.00 a year. I have almost forgotten now. He was called to the general managership of the Ohio & Mississippi railroad, with headquarters at St. Louis, to which place we removed and where we remained for 18 months or two years, after which we returned to La Fayette, Indiana.

After our return to La Fayette Mr. Waldron took the general superintendency of the Lafayette, Muncie & Bloomington railroad, which afterwards became the Lake Erie & Western railroad, of which he was made general manager and so continued until 1883, when he resigned his position and engaged himself more actively with his farm interests, which he had established while railroading.

He was not connected with any railroad after 1883 to my knowl-

edge. The highest salary he ever received was $10,000.00 a year for 18 months or two years while he was general manager of the Ohio & Mississippi railroad.

After our marriage we acquired property, and in 1876 or 1877 built ourselves the home where I now reside. It is a large beautiful house. The grounds comprise over four acres. At the time Mr. Waldron gave up railroading he had interests, I believe, in the car works at La Fayette. We had some houses, small houses, that we rented, the proceeds of property that was accumulated, and the farm, the stock, the stock-barns, and surroundings.

I think in the period between 1883 and 1887 Mr. Waldron became indebted and was considerably embarrassed in his affairs. There was a mortgage on the farm.

We moved into the new house early in the winter in 1876, and I have continued to reside there from that time up to the present.

119 The small houses I have spoken of I owned. They are tenant houses. They had been, while they were in good shape, paying rent—one $20.00 a month and the other $15.00 a month—but they grew older, and for two years I have been getting $17.00 a month for one and $13.00 a month for the other.

There is another very old house which was deeded to my son, Winnie, and myself at the time of the sale of the farm, being considered my portion, and I was to take the deed jointly with him, which I did. It is situated on Third street, across the street from the Lafayette car works, and rents for $13.00 a month. I received a little more for it in 1887. Its location is a very bad one and objectional to all good tenants that are responsible and I have had a great deal of trouble in collecting my rents, and really it has never netted me a cent above expenses. Aside from the rents I have stated I had no sources of income whatever. The taxes, repairs, and insurance on the whole property are about $325.00 a year.

Since my separation from Mr. Waldron my family has been my son and my mother, until October 18, 1889, when my mother died. I found her dead in bed.

Mr. Waldron left home to come to Chicago in June, 1886. He had been to Chicago very frequently before that time.

Q. Do you know if anybody sent for him?

A. I do.

Q. Mrs. Waldron, did you see any telegrams to Mr. Waldron from any person? If so, from whom?

A. I saw a telegram to him from she that was Mrs. E. S. Alexander.

Mr. WALKER (for defendant): We object to that and move to have the answer withdrawn. If I understand the witness, it is that she saw a message at La Fayette—a message received at La Fayette from Mrs. Alexander to her husband; from the defendant

120 here to her husband. Now, in the first place, I ask to have that answer withdrawn, because it is stating a part of the contents of that message. More than that, if the message itself was

here it is but a copy transmitting over the wires, and the contents of that telegraphic message received cannot be proved by stating its contents unless it is admitted that the message was sent by the party whose name purports to be signed to the message when received by the company. Unless this be admitted or proved the message received does not bind the defendant or the person whose name purports to be signed to the message received.

The COURT: I think the first objection is good, that they have not laid the foundation yet for introducing parol evidence of the contents of the message; you may be right about the second objection, that the message, if here, would not be admissable unless there was evidence showing that the message was signed by the person purporting to sign it.

Mr. ALDRICH (for plaintiff): We submit that is not the rule, your honor.

The COURT: I do not know as it is, but it seems to me it ought to be.

By Mr. ALDRICH:

"Q. Mrs. Waldron, you need not state the contents at all now; state whether or not you saw it.

A. I did."

Q. Where did you see it?

A. The first one I think I saw on our library table.

Q. Passing the contents of the telegram or anything about it until the court rules on that question, I will ask you to state whether or not your husband left for Chicago immediately after that time.

121 A. He did; at least he said he was going.

Q. You must not tell what he said. He left home at that time?

A. Yes, sir; in response to the telegram; this first time he left was in December, 1885; he was gone about a week and then returned home and lived with me as my husband.

Q. How soon did he leave again?

A. Well, within the next ten days, I think.

Mr. WALKER (for defendant): I ask to have all that stricken out that precedes any date laid in the declaration.

The COURT: No; I don't think we will strike it out.

(Witness resumes:) This time he left home, I think, was in the neighborhood of January 10, 1886; the next time after this Mr. Waldron went away was the very last of January or the first of February, 1886. I couldn't say exactly the date.

Q. State whether or not you saw any telegram at that time; don't state the contents now; the court has not ruled on that question.

A. Yes, sir; I did.

Q. And from what person it purported to be?

Mr. WALKER (for defendant): I object to that.

The COURT: The objection is sustained; that is part of the telegram itself.

Mr. ALDRICH:

Q. Did he leave home after this time; and, if so, how long?

A. He went to Chicago, as I say, the last of January or the first of February, I think it must have been. I know the next time was very soon following that, and it was the eighth day of February he went to Chicago again; he was gone at that time between three and five days.

122 The next time he came from Chicago he had gone from home to New York, and returned to Chicago to attend Mr. Alexander's funeral, and came from there home. From that time up to the time he left home in June, 1886, he was absent from home in Chicago frequently, and returned after each visit and lived with me as my husband. After he left me in June, 1886, he never returned home again.

I next saw him July 8, 1886. I came with my son to Chicago, at my son's instance, to visit my husband. I found him at the Beaurivage flats, on Michigan avenue.

Q. What was the purpose of your visit?

Which question was objected to by counsel for the defendant; which objection was overruled by the court; to which ruling of the court counsel for the defendant then and there duly excepted, and thereupon the witness answered said question as follows:

A. To see and talk with my husband, as any wife would visit her husband.

The COURT: I think she may state what she came here for.

Mr. WALKER (for the defendant): It seems to me the witness herself should not be permitted to state her motive in calling upon her husband, who is not a party to this suit, nor do I see how it is competent at their instance to show what occurred between those two persons at that time unless the defendant was present.

We can undoubtedly draw it out because the plaintiff was present. Now the plaintiff herself, in support of her own case, is permitted, first, to state her motive in going to visit her husband, and follow it up by showing what the conversation was that occurred between them and what was done between herself and husband not in the presence of the defendant at all.

The COURT: I think that would limit the testimony altogether too closely in a case of this kind. I think the transactions

123 after his contact with this other lady, transactions between the plaintiff and Mr. Waldron, are competent to go in evidence as part of the case. Of course, her motive may not be very material, but it is a fact within her knowledge what her intentions were. Although it may not be very material in the case, I think she may state what she came there for.

Mr. WALKER (for defendant): Let me state another objection.

The COURT: You have the full benefit of any objection you may make.

Mr. WALKER (for defendant): I wish to state another objection. At the time this occurred the plaintiff and Mr. Waldron were husband and wife, and I know of no rule which permits any conversation between husband and wife to go to a jury in a litigation between themselves and others. On behalf of the defendant we object to all evidence of the witness of transactions or conversations of the witness with her husband offered in her own behalf.

Mr. ALDRICH: The application of that rule is specially denied in this kind of a case.

The COURT: That is altogether a more important and doubtful question than this, and I anticipate questions of this kind may arise on both sides of this case. I will hear arguments or authorities on this point. Both the laws of the State and the laws of Congress make her a witness in her own behalf, and how far that overruled the other principle that the disclosures of conversations between husband and wife cannot be made by one of the parties after divorce or death of the other is a question that perhaps the court will have to determine. If you are not prepared to present that question the court will rule upon it.

Mr. WALKER: I make the point now. I don't care at this time to present any authorities. If counsel says that is the law, I will accept their statement of it.

124 Mr. ALDRICH: Our statute provides that no husband or wife shall be a competent witness as to any transactions or conversations between each other except in the following instances, and then names the exceptions. The third of these exceptions is that in actions concerning their separate property they can testify. Our Supreme Court has held that an action for slander or malicious prosecution or an action of this kind are separate property and make a wife competent to testify to all transactions.

The COURT: There is no doubt of that.

Mr. ALDRICH: And they have also held that it is part of the *res geste*, and she is a competent witness in her own behalf on that subject.

The COURT: In our State, I think, it has been ruled upon that in an action of this kind where the plaintiff has been made a witness on her own behalf, or either party, under the laws of Congress in an action of this sort, that she is a witness generally in her own behalf, although it may relate to matters between herself and her former husband. It is rather a complicated question; still I will admit the testimony, and if there is any authority presented afterwards we can have further arguments on it.

Mr. WALKER: I shall insist if the evidence is admitted no argument shall be made hereafter; the evidence is to stand. I think it sometimes works a great injustice to admit evidence and then attempt to withdraw it from the jury.

The COURT: No doubt about it, but you are not prepared to argue the question now. You have not the authority to present.

Mr. WALKER: I am not going to contest the question. Let it be

established, if counsel are willing, in this case, that any conversation between husband and wife may be shown occurring at any time.

Mr. ALDRICH: We have not announced any such rule as
125 that; you are crossing another bridge.

Mr. WALKER: Not at all. I am contending for one principle; afterwards, if we undertake to introduce evidence of conversations between husband and wife, then you should not object to those conversations. You can accept either horn of the dilemma you choose. We are entirely willing that all conversations between the parties shall go to the jury so far as either party may bring them up, subject, of course, to the ordinary rule of evidence that the plaintiff cannot in her own behalf state a conversation between herself and a third person, who is a competent witness, in the absence of the defendant.

Mr. ALDRICH: We are willing it shall all go to the jury. You may go on.

The COURT: The court has already ruled on it. We will take the testimony. Don't state the conversation with anybody—either your husband or anybody else.

(Witness resumes): I came to visit my husband. I met him at the Beaurivage flats, in the presence of Mr. Waldron's brother and his wife and also, I think, Henry Kirtland. I saw my husband. He received me very unkindly. His unkindness almost crushed me. I don't remember what I did do; all. I was hardly conscious of my condition. I was sick there between two and three days and nights. The first I realized was my son standing over me, and later the lady who kept the flat. When I came to myself I don't think Mr. Waldron was present. I did not see him afterwards during that visit here. He never after that returned to me at La Fayette. Afterwards he wrote a letter to me, requesting me to get a divorce, and Judge Coffroth came to me and asked me.

Q. Mrs. Waldron, at the time of the adjournment you were describing what occurred at the Beaurivage flats and your condition? You may state how that was brought about.

126 A. By a shock which I received by the announcement by my husband.

Q. You cannot tell what he said. What did you learn at that time? State the facts, what you learned.

A. That he never intended to return to his home.

Q. State whether or not was that the first time you had learned that fact.

A. It was.

Q. How soon did you return to La Fayette?

A. I think it was the third day after that, as soon as I was recovered enough to return home.

The COURT: You conceded, I understand, that the statements of Mr. Waldron to the plaintiff were not evidence in the case to show the estrangement?

Mr. ALDRICH: There is authority, your honor, that anything that

took place under those circumstances, statements and communications between them, are evidence, and that she is permitted to testify to it.

The COURT: I can't see why the fact cannot be proven by his statement as well as by his conduct.

Mr. ALDRICH: I have examined the question, and do not choose to risk it under the Illinois statute.

Mr. WALKER (for defendant): I do not wish to be committed to any ruling of the court now without a thorough understanding. I am objecting to the evidence of the witness as to conversations that occurred between herself and her husband offered in her own behalf. Upon a cross-examination or in the making out of our case we shall claim it is perfectly competent to prove any statement or admission made by the plaintiff, whether to her husband or to any other person.

By Mr. ALDRICH:

Q. You may state what next happened.

127 A. I received a call from Judge Coffroth, a resident of La Fayette, accompanied by a friend of mine, Mr. Goldsmith.

Q. You may state the purpose of that interview, whether it related to a separation between you and your husband or not.

A. It did.

Mr. WALKER: I move to have that stricken out. If she cannot prove the interview she cannot state what occurred or what was said.

Mr. ALDRICH: We claim, in regard to that rule, that every communication between husband and wife, except those barred by the statute of this State in an action of this kind, is admissable in evidence as a part of the *res geste*, everything that looked to a separation.

The COURT: Still you would not wish to say that conversations between these parties and the witness were competent unless you can show the husband authorized it.

Mr. ALDRICH: We shall show the husband authorized it, and that it was a step taken by him after his connection with this woman for the purpose of severing that relation the severance of which is the subject of our case.

The COURT: Shouldn't you show that first?

Mr. ALDRICH: It will appear from letters he wrote and which were shown to her.

The COURT: You want now to show the whole conversation between the plaintiff and those parties?

Mr. ALDRICH: I do. I want to show what the conversation was and what was done. All the conversations, although the other party was not present, are a part of the *res geste* and are admissable in evidence.

The COURT: So far as appears now the conversation would not be competent. You may make it competent by showing that

128 the proceeding was instituted by Waldron and authorized by him.

By Mr. ALDRICH:

Q. How do you know they represented Mr. Waldron, if you do know it?

A. I don't know, only that they said so.

Q. Passing by that interview, then, you may state whether any person called on you that produced any authority showing that he represented your husband?

A. Judge Coffroth did.

Q. What was that?

A. A letter from my husband.

Q. Was that shown to you? Did you read it?

A. He said that he presumed——

Q. No matter what he said.

A. Well, I don't know how to talk.

Q. Answer the question. Did you read the letter?

A. I did not read his letter.

Q. Read whose letter?

A. Mr. Coffroth's letter.

Q. You said Judge Coffroth sho-ed a letter from your husband.

A. I had a similar letter.

Q. You cannot tell about communications between those two.

A. Then I don't know how to talk.

Q. You may state if any person called on you later than Judge Coffroth.

A. Yes, sir; later there was.

Q. Who was that?

A. His name was Robert Davey.

Q. Any other person?

A. No, sir.

Q. Did Mr. Behm ever call in that connection?

A. Well, later he did.

Q. State whether or not Mr. Davey produced any authority or evidence or authority from your husband, Mr. Waldron.

129 Objected to by counsel for defendant.

The COURT: She may state whether he produced any paper or writing, but not state the contents of it.

(The WITNESS:)

A. He did. He read letters in my presence and said they were from my husband.

Mr. ALDRICH:

Q. Do you know the letter to be in your husband's handwriting?

A. Yes, sir.

Q. Did you retain that letter?

A. I did not. He did not give it to me. It was left with him.

Q. State whether or not letters were received from Mr. Waldron by any other members of your family; and, if so, whom?

A. Yes, sir; my son received letters from Mr. Waldron.

Q. You may state whether or not Mr. Waldron withdrew his support at any time; if so, at what time?

A. He left his home the 6th day of June, and in October—I think the latter part of October—we learned we could not more——

Objected to by counsel for defendant.

Mr. ALDRICH:

Q. State whether he withdrew his support.

A. He did.

Q. You may state how you know that he did, not stating what anybody told you; but if you saw any writing upon that subject you may state.

A. I did.

Mr. WALKER: I object to that as being an unfair way of getting at the contents of a paper, and move to strike out the questions and answers.

The COURT: The paper would be the best evidence.

130 Mr. ALDRICH:

Q. You may state how he withdrew his support.

A. He had been paying our bills, and we were informed he would be responsible no longer.

Counsel for defendant objected to the witness stating what she was informed.

Mr. ALDRICH: State whether or not he declined to pay your bills?

A. Yes, sir; he did.

Q. How long did this continue?

A. Up to the time of the divorce; we never received any more.

Q. Did you come up to Chicago again before the divorce?

A. Yes, sir; I was here several times. The first time after the 8th of July, I think, was about the 11th of October following.

Q. What was the purpose of that visit?

A. It was to see some parties here in relation to some charge that he had made against me that I felt I was not guilty of. I did not meet him on that occasion and returned home. I don't think I was here until the following spring; perhaps about April. I would not be sure about the date.

Q. What was the purpose of that visit?

A. I was to see if I could not talk with him and reason with him in regard to our son and reason with him generally. I think that was in April or the first of May of 1887. I did not see him. I then tried to see Mrs. Alexander. I went to her house, but did not find her and returned home. I came to Chicago again in just a week from that time.

Q. For what purpose?

A. To see my husband and also Mrs. Alexander. I saw my husband at the Grand Pacific hotel. I saw Mrs. Alexander at her residence.

131 Q. You may state for what purpose you went to see Mrs. Alexander and what was said and done.

Mr. WALKER (for defendant): I object to the witness stating the purpose of her visit. I do not object to what was said and done.

The COURT: She has been allowed to state generally what she went for.

A. After my interview with my husband I, of course, was very much excited. We had a general conversation in regard to our affairs, and then I decided Mrs. Alexander was a party to the matter, and I went to her home and inquired for her. She came down and met me.

I told her that I had been under the impression for some time that she was having an influence over my husband; that he was my lawful husband, and that he had been absent from home a year and, as I generally understood, he had been a visitor and an inmate of her house and under her influence, travelling with her, and all of those things, which made me feel very badly indeed. She replied to me that she was a Christian woman. I said, So I had always supposed. So I had taken it for granted that she was; but I said, "Reverse this case and think how you would feel were you similarly situated; that I had your husband under my influence, away from you and your son, and you were in your desolate home, lonely, with an old mother. Just think of the situation, of what I feel, and what I suffer. This is what people are saying, Mrs. Alexander—that you are in love with my husband and he is in love with your money, and that your influence has taken him away from us." She said that Mr. Waldron was a very pleasant gentleman and she knew nothing of our family troubles. I said the relations of our families admitted of her knowing and
132 having inquired of him as a friend when she knew he was absent from his home—inquiring the reason. She said she never meddled with Mr. Waldron's troubles. I said, "I have been informed that you have been travelling with him, and people of my acquaintance have seen you and him on the public streets of Chicago frequently. He does not come home." I said such things, of course, made me feel very badly. I could not think that she intentionally would lend her aid to this thing. Some callers interrupted her just then and I asked to be permitted to retire, for I was crying. She insisted on my staying there and facing those callers with my tear-stained face, which I did, and after they went away there was very little said. We spoke kindly of her husband, and she spoke of Mr. Waldron being a very pleasant gentleman. She was cold and unsympathetic. She did not say a great deal. She did not deny but that she had harbored Mr. Waldron. I told her about our desolation and I felt that she was stony and cold.

What I referred to in my statement to her that the relations of our families admitted her knowing and inquiring the reason of his absence from his home was that we were friendly, of course, and that her husband had visited our house. He had been at our house with my husband under very pleasant circumstances. I told her

that Mr. Waldron was asking me to obtain a divorce from him; that I felt her influence, and that I utterly declined to do such a thing. She didn't say anything to that. I said to her that my husband was simply idolized in his home; that there was no reason in the world for his leaving it; that he had every attention that a man could ask for. She said that she was sorry, very sorry. I only stayed there a few minutes longer. I rose to depart and came away crying. She said that if I so requested she would never permit Mr. Waldron to visit her house any more. I said, "It is with you to judge, Mrs. Alexander; he is my lawful husband," and then went to the hotel. It was evening, and I was unable to leave my bed till the next evening, when I took the train and went home.

133 I did not see my husband again prior to the time I obtained my divorce. I saw him before I saw Mrs. Alexander, and that was the last time I talked with him. I obtained the divorce from my husband on the 21st day of June, 1887. This was soon after I had been to Chicago. I was here on the 13th of May, when I made these visits, and the divorce was granted June 21st. The 13th of May was my last visit to Chicago.

By Mr. ALDRICH:

Q. You may state the circumstances under which you procured that divorce.

Objected to by counsel for the defendant as incompetent, irrelevant, and immaterial.

The COURT: The question is general, but she may state anything relevant to the issue.

By Mr. WALKER:

Q. You may state what induced you to get the divorce.

Objected to by counsel for the defendant as being incompetent, irrelevant, and immaterial.

The COURT: If there was anything on the part of Mr. Waldron that induced you—anything in connection with him—if it was at his solicitation or instance, you can state that fact.

By Mr. WALKER: Relative to this whole matter pertaining to the divorce, what we claim is this: That the defendant should not be prejudiced at all by the action of either party to the divorce proceedings in Indiana unless they connect her in some way with the proceeding. She could not control it; it does not appear that she was there or had any knowledge of it.

The COURT: That is so, but there are some facts which may be proven in this case entirely distinct from any knowledge of Mrs. Alexander. For instance, it is essential to prove that the affections of Mr. Waldron were alienated from his wife. That is

134 a material fact aside from the question of how they were alienated, and any acts of Mr. Waldron in regard to the divorce which tend to prove that issue, I take it, are competent,

although they may have been unknown to the defendant in the case. They are competent for the purpose of showing that he was trying to get rid of his wife. If they were no longer living happily together and it was his anticipation and wish that she should get this divorce, I think this is a material fact in the case.

By Mr. WALKER: It is undoubtedly a material fact in the case as to whether or not the affections of Mr. Waldron for his wife, this plaintiff, were alienated, but by what means, what cause, does not matter unless they can connect this defendant with the matter or show that she is the controlling cause.

The COURT: Of course it does not. But one material fact to show is that the affections were alienated. They have got to prove that or they do not make out a case.

Mr. WALKER: They have already proven he told her he would not return to live with her.

The COURT: That is only one of the circumstances.

Mr. WALKER: Then, I apprehend, after the evidence is all in, that the jury will have to be directed in the matter by the court as to what evidence should bear upon this issue and what should not. In other words, the court agrees with me that before they can hold the defendant responsible for the alienation of the affections of Mr. Waldron or at all responsible for the divorce instituted by this party in La Fayette—until they connect her with the matter, directly or indirectly, then she should not be responsible in this action for any damages whatever by reason of those proceedings.

The COURT: It will not be necessary to say to the jury that she directly influenced these divorce proceedings, although the fact that he helped to procure the divorce is material evidence. But
135 of course it will be necessary to go further than merely to show that there was alienation or estrangement of the husband from the wife. That will not make a case. They must connect Mrs. Alexander with it and show that she was the cause of it. There is no doubt about that; but it is not necessary to show that she was the cause of getting this divorce by any means. It is necessary to show that she was the cause of the estrangement or the alienation of the affections of the husband; but to show that there was alienation or estrangement existing as a matter of fact, they can show what connection he had with getting this divorce and what agency he employed. The question is not competent generally unless the answer has some relation to some action of Mr. Waldron with regard to it. The answer is only admitted on the ground that it will connect Mr. Waldron with the getting of that divorce. If he instigated it, it will be competent evidence. That is the ruling of the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

The question was then read to the witness.

A. It was first persuasion—inducements of different kinds. He offered me a certain portion of the property, or all, and money be-

sides. I did not consent to get a divorce from him. Then he threatened me.

By Mr. WALKER, for the defendant: I want to know whether this threat came from Mr. Waldron personally to you?

No answer.

By Mr. ALDRICH: I will ask you whether threats were made?

A. Yes, sir.

Q. You may state who paid for getting the divorce—all the costs of it.

A. I supposed he did.

Counsel for defendant objected to the answer and moved to have it stricken out.

136 I never paid any costs nor any counsel. I was not present in court when the divorce was got. I saw such letters as were written to my son Winfield.

Mr. ALDRICH, for the plaintiff: I will offer those letters in evidence later on.

Cross-examination.

By Mr. WALKER, for the defendant:

I was married to Mr. Waldron on the 17th of September, 1865, in Syracuse, New York. I did not leave La Fayette to go to Syracuse for the purpose of getting married. We left La Fayette a week or ten days before that date. I was going to New York to purchase goods for my business. Mr. Waldron left with me. He was going to Syracuse to visit his parents and family. I don't remember the day of the week or the day of the month when we left La Fayette. We went directly through to Syracuse. We did stop over on account of delayed trains at Detroit a few hours. I think it was some time in the night when we arrived there. The train on which we left home was behind time two or three hours when we reached Detroit, and we were out of the regular connections, and that was why we stopped. Then we went on the next day to Syracuse.

We visited there several days—he at his father's and I at my uncle's. I stopped at Syracuse to visit my uncle and went directly to my uncle's residence. At the time we left La Fayette there was no arrangement entered into between us for our marriage at Syracuse. I had known Mr. Waldron nearly a year, and he had been in our family most of the time. There had been an engagement of marriage entered into between me and Mr. Waldron some time in August, before we left La Fayette and previous to our going to Syracuse, but the time had not been fixed for the marriage. We had rather calculated on about Christmas of that year.

I think I was about 32 years of age at that time and Mr.
137 Waldron was 22. I was born in 1833; that was my Bible record. Till we reached Syracuse nothing had been said between us about being married there at my uncle's. My uncle was my counselor—my advisor—and had always taken a deep interest in my life since my father's death. My mother was his favorite

sister and we were very near to him, and while we were visiting there Mr. Walsron visited my uncle's family also and our families visited back and forth and my uncle finally came to know that he was my intended husband and they liked him very much, seemed to be very much pleased all around, and after my sojourn there of a few days I left for New York alone to make my purchases and made them and returned to Syracuse and my friends met me at the depot and I went to my uncle's house. While I was absent my uncle said he had thought this matter over (he was very practical and businesslike) and he says, "Mary, if you and Ed. are going to be married, why don't you be married here before you return home and go right about your business. Probably, if you wait till Christmas, you will go on and spend more mone*h* and have to have another wedding trip." He says, "I will merely make the suggestion." I says, "We hadn't thought of that; we hadn't expected to do so," and I said I would speak to him about it. I don't know, I said, I objected on one account and that was because we were absent from my mother and bro*ht*er. He said he didn't think that would be anything, that my mother would be willing it should be consummated at his house and more glad than anywhere else away from home unless it could be in her presence. So we talked the matter over and Mr. Waldron was there and he said he would call with a carriage the next morning and we would go out and take a drive and talk the matter over. We did so, but, to make a long story short, we talked the matter over and thought it best to be married in Syracuse, at my uncle's, instead of at home with my mother and brother. That was the only reason the marriage was consummated at Syracuse.

138 We returned to La Fayette and went to live in my home—my mother's and mine together. We did not own the property; we rented it. My mother was Mrs. Russell. She had always lived with me. I was her only daughter and she had never left me. She had been an invalid all her life, and was an invalid from the time we were married down to the time of her death, confined to her bed most of the time. She was 78 years old when she died.

I was worth between four and five thousand dollars at the time we were married. It consisted of a stock of goods for business purposes. I could not really say what was the value of that stock of goods. I have no particular inventory of it at that time. I also had a very good furnished home. The furniture belonged to me. My mother had real estate in the village where we used to live, near Delphi, at Pittsburgh, Indiana.

Mr. Waldron came right into our home, and "mine" was never said as to the property I had. It was "ours." Mr. Waldron was not in any business that required means. He was working for a salary, and the proceeds of the property which I had at that time, when it was disposed of, was not given to Mr. Waldron or used in business for Mr. Waldron in any way or shape.

I continued in the millinery business between three and four years after my marriage to Mr. Waldron. Prior to the marriage I had been engaged in that business about three years in La Fayette.

I purchased that stock of goods from a lady who carried on the business there twenty years—a Mrs. Roberts. She died long ago. At the time I purchased it the stock was invoiced. It was run down very much, and invoiced about six hundred dollars.

Before going to La Fayette I lived at the village of Pittsburgh, in Carroll county, Indiana—the county adjoining that where La Fayette is situated. It was about a mile from Delphi, and I think about 22 miles from La Fayette. Delphi is the county-seat of Carroll county. I was born in the State of New York. I was
139 not engaged in any business at Pittsburgh. My first business venture was at La Fayette to support my family. I never served an apprenticeship to learn the trade at all, but, upon a visit that I made at Syracuse one winter, at my uncle's house, through my taste and fancy I went to a private millinery-house that were acquaintances of my uncle's, and spent a few hours each day, and got an idea of the business so that I could carry it on.

I was married to Mr. Wald-on about 22 years. I first met him at my own home in the fall of 1864; my brother introduced him; he came to our home to live a few weeks later. I don't know when; not very long after that; and he remained at our home and made it his home as a boarder from the fall of 1864 till we were married, in September, 1865.

I was married before my marriage to Mr. Waldron; about ten years before I married Mr. Waldron, it seems to me. I am not good at remembering dates; it was about nine years before that. I think it was in April. I think in 1856.

Q. Wasn't it April 3rd, 1857?

A. Well, I don't remember.

Q. What was your age at that time?

A. I was 21 or 22.

Q. Would you not be more than that?

A. I think not.

Q. If you were born in 1833 and were married in 1857 you would be 24, would you not?

A. I suppose I would.

I was married to Mr. Beauchamp, in La Fayette, at our residence. I was living in La Fayette when I married Mr. Beauchamp. I don't know that I have said the exact year when I went to La Fayette. It was more than three or four years before I met Mr. Waldron. I had been a resident of La Fayette some eight years.

My mother was present at my marriage to Mr. Beauchamp; he had been living at our old home in Pittsburgh some two or three years before our marriage; he was living at La Fayette at the time of our marriage; their business was broken up and I think
140 he was contemplating some change; but he was living there, I think, with his father.

Q. How long did you live with Mr. Beauchamp after your marriage?

A. Only a short time.

Q. State how long.

A. Well, he met with reverses——

Q. About how long?

A. With his father——

Q. One moment. I am asking you about*n* dates. About how long?

A. Well, perhaps a month or six weeks. He went and came back; went again and came back.

Q. How soon after your marriage did he leave you?

A. Finally he left entirely.

Q. How soon after your marriage did he leave you the first time?

A. Nearly two months—six weeks, perhaps, or two months—somewhere about that.

Q. Did he not leave you on the same day and go East with a stock of cattle?

A. No, sir.

Q. He did not?

A. He did not; no, sir.

Q. He remained at your home with you for two months before he left you?

A. I didn't say he remained there consecutively. I said he was there a few days and went away, and returned and went away again.

Q. That is what I want to get at. I want to know when he first left you after marriage.

A. He went away, I think, in a couple of days after we were married.

Q. Did you and Mr. Beauchamp cohabit at all as man and wife after your marriage?

A. Yes, sir.

Q. For how long a time?

A. For the time that he remained.

Q. You can't tell how long that was?

A. Can't tell exactly, for then I didn't keep my dates.

Q. Have you a son by Mr. Beauchamp?

A. I have.

Q. Of which Mr. Beauchamp is the father?

A. I have; yes, sir.

141 Q. How soon after that time was your son born?

A. About two months, sir.

Q. I ask if your marriage with Mr. Beauchamp was at all compulsory, so far as he was concerned?

A. Well, I possibly might say it was.

Q. Were threats of prosecution used?

A. I really don't know. I suppose they were, generally. My friends did that for me.

Q. You employed a lawyer before you married him, did you not?

A. My friends did.

Q. Did you not yourself employ a lawyer and have an interview with him relative to your matters or troubles, and was not this marriage the result of that, and was not General Styles the lawyer?

A. My mother and myself had an interview with General Styles.

Q. Didn't that interview with General Styles relative to this matter occur at a hotel instead of your own house?
A. Possibly it did.
Q. Do you now remember a hotel man by the name of Jones that occupied the hotel?
A. Yes, sir; I do.
Q. Was it not at his hotel?
A. I don't know but it was.
Q. And didn't Mr. Jones send to General Styles and bring him in at your request?
A. Well, I could not say. I could not remember that particularly.
Q. Were you not at that time living at Pittsburgh?
A. No, sir.
Q. You were not?
A. No, sir.
Q. Is Mr. Beauchamp now living?
A. I don't know, sir.
Q. You have no knowledge of his death?
A. I have none about him whatever.
Q. You don't remember how long he remained at home or how long you cohabited as husband and wife after you were married?
142 A. Because he went and came; it was a good while ago; two or three times. He went away on business and returned again and went away again.
Q. Did you see him at all after the two months you have spoken of before you were divorced from him?
A. No, sir; I did not.
Q. Then you saw nothing of Mr. Beauchamp save during a few times. You are not able to mention the number of times after your marriage and before your divorce save the few times within the first sixty days?
A. No, sir.
Q. Was this son of Mr. Beauchamp living with you at the time Mr. Waldron came to the house?
A. He was, sir.
Q. Did you inform Mr. Waldron of your marriage to Mr. Beauchamp and the circumstances of that marriage?
A. I informed him of my marriage and divorce.
Q. Did you inform him before marriage the circumstances under which you married Mr. Beauchamp?
A. I don't know that I did, particularly.
Q. Did you inform him that your son was born sixty days after your marriage to Mr. Beauchamp?
A. I did not.
Q. Are you certain that you advised him you were a divorced woman?
A. I am, sir.
Q. Before you married him?
A. I am, sir; positive.

Q. And that he knew that before he married you?

A. He knew it well.

Q. But he did not know the peculiar circumstances connected with your first marriage?

A. I never took any pains to conceal anything from him.

Q. Did he know it or did you tell him?

A. I don't know whether he knew it or not.

Q. You said you didn't tell him?

A. All my neighbors and my friends knew it. Every one could have known it that wanted to know it.

143 Q. Did you tell him?

A. I did not, sir.

Q. So that, during that engagement to Mr. Waldron, you never communicated the fact to him that you had been unfortunate, and that this child of Mr. Beauchamp's was born within two months after your marriage?

A. No, sir; I did not. My neighbors and friends knew it.

I supposed Mr. Waldron knew about it, but I don't know that he had any knowledge about it prior to the time the sheriff presented him a fee-bill with an execution for costs growing out of my first divorce case. He told me of that circumstance and expressed his surprise that a fee-bill should be presented to him growing out of the divorce case, but he could not have been more surprised than I was. I was told the costs were all paid by my friends who acted in getting the divorce case between me and a former husband. The only thing that surprised me was that the bill was not paid. I was the plaintiff in that case and procured the divorce. I don't know who my lawyer was in that case. I think I procured that divorce in the year 1860.

About five years after I procured the divorce from Mr. Beauchamp I was married to Mr. Waldron. We were married in the autumn, and I think it was the following spring—in May or June—that Mr. Waldron spoke to me about this fee-bill or execution having been presented to him for payment. I took the bill and paid it. I was very sorry to have had him troubled with it.

Mr. Beauchamp called on me at my home there in La Fayette a few months after I was married to Mr. Waldron. It was a great surprise to me. I never saw him after that and do not know whether he is living or dead. I had not advised Mr. Waldron that my former husband was living and was in La Fayette. I could not have told whether he was living or not. I advised Mr. Waldron of that call of my divorced husband immediately.

In relation to the property of which I now hold the title,

144 first, there is the homestead which was occupied by me with Mr. Waldron—about four acres of ground and a large brick house. I suppose it is more valuable than the price it would command. It won't command any price now. I could not sell it at all. I suppose it cost between eight and ten thousand dollars—the ground and house, buildings and all. The title is in me of all the property I mentioned except one piece, and the title of that is in me and my son.

As to the piece of property I spoke of being purchased after the sale of the farm, that was a farm Mr. Waldron had owned and almost paid for, and finally, through his agent, sold it after he left home. There was a mortgage on it, and I believe he sold it subject to the mortgage. The farm was sold after he left home in 1886. I do not know how much he got for the farm over and above the mortgage.

I have mentioned all the property that I hold in my name, or in my name and my son's, in La Fayette, except a couple of lots. They are almost valueless. I have no personal property to speak of, except my household effects. I have no moneys on deposit, and never had any, either before my married life or while I was Mrs. Beauchamp, except when I was in business, from day to day and week to week, as my business required.

At the time Mr. Waldron left La Fayette this property I have mentioned was all the property he had there. He didn't own anything else. He took no property with him when he left me; he left it all—conveyed it all to me, debts and all. The debts were mortgages on the property.

I don't know whether or not there was more than one mortgage on the forty acres where the stock barns were, and there was a mortgage on what was called the tenant property. It was all conveyed to me. One farm was traded away first, but the farm
145 that connected with the home property was conveyed to me.

It was forty acres, the stock farm, and was conveyed to me subject to the mortgage. All this property was conveyed to me after Mr. Waldron left La Fayette and after he had finally left me.

I don't know that he took anything away with him, unless it was his office effects. I don't know that he had any money or securities that he took away with him. I don't know anything about that; but, so far as I have any knowledge of his property, he left it all at La Fayette and it was afterwards conveyed to me. I know through his agent. There was horses and such things.

At the time we were married I think he was getting about fifty-five or sixty dollars a month. Afterwards it was increased and his salary went up quite rapidly. He became the general manager of the Lake Erie & Western railroad. I think when he first became connected with that railroad General Chapman, now dead, was receiver. After it went out of the receiver's hand Mr. C. R. Cummings, of Chicago, I think, controlled it.

When Mr. Waldron first became connected with that railroad I think his salary was about three thousand dollars a year, and that was raised to, perhaps, thirty-five hundred or thirty-six hundred, and so on. Every little while it was increased. He left that road in July, 1883—resigned his position. He had foreshadowed his resignation to me. I did not have anything to do with it.

I never called on Mr. Cummings in Chicago relative to the matter. I never called on Mr. Cummings and complained of Mr. Waldron—that he was travelling over the road in a private car and taking other women with him and using that car for improper purposes. I never so stated.

I am acquainted with Mr. Waldron's brother, Emory Waldron, and with his wife. Prior to 1886 they lived in La Fayette, and I had known them from their marriage until they left La Fayette and was a frequent caller at their house, and thought I knew them, but
146 subsequent circumstances proved that I did not know them. I thought I had confidence in them and that they were my friends, but later on found they were not. I found that Emory Waldron's wife betrayed my confidence. I did not state to Mrs. Emory Waldron, after Mr. Waldron left the road and before 1886, that I had come to Chicago and called on Mr. Cummings and stated to him that Mr. Waldron was using his private car over the road and was accompanied by other women and was using the car for purposes that were not satisfactory to me. I never called on Mr. Cummings relative to the business of my husband, and never had any interview with him except in the presence of his family. I am acquainted with Mr. Cummings. I never called on him and never had an interview with him about my husband, and never made such a statement to him in my life, and never told Mrs. Emory Waldron nor Mr. Emory Waldron that I made such a statement to him.

I know Thomas L. Brannon, I am sorry to say. I don't know whether he ever betrayed my confidence or not. I never had any dealings with him. He was at our house occasionally and I had talks with him—not particularly about our domestic matters or the relations between my husband and myself. I might have talked with him a little about their drinking. I never said to Thomas L. Brennan, in our own house, in the dining-room, on Sunday, or elsewhere, that my husband while on the road had a car of his own and was travelling over the road with other ladies, and that it was a source of trouble with me, and that he was using his car for improper purposes. I never said that to Mr. Brennan at my house or under any circumstances, nor words to that effect. I never discussed with Mr. Brannan at all this private-car business. The private car was never a source of trouble, nor the uses Mr. Waldron made of it, nor the persons who rode with him over the road in it.

The relations existing between myself and husband during
147 our married live-, from the time of our marriage down to the time of my divorce or the day of our separation, were pleasant. So far as I was concerned I can answer for myself, and Mr. Waldron appeared to be satisfied with his home and family. He did leave his home before he came to Chicago. I think it was in February, 1885. He went to the St. Nicholas hotel, in La Fayette. I don't know whether he intended to live there or not. He remained there and didn't come home for a few months. He was living at home at the time his leg was broken. He might have had a room at the St. Nicholas hotel for a day or two with Mr. Brannan at that time. Mr. Brannan was there and Mr. Waldron was engaged in business with him. Mr. Brannan's home was in Ohio, and when he passed through he would stop at the hotel, and Mr. Waldron would stop with him. If Mr. Waldron had left his home and gone to the St. Nicholas hotel to board and was living at the St. Nicholas in October, 1884, at the time he had his leg broken,

I did not know it. He dressed himself at home and left his soiled clothes there, as usual, to go out to his haying business with Mr. Brannan on Sunday, and on Thursday following he broke his leg at the Lahr house, in La Fayette, I believe. I did not see him until after the fracture that night. He was not carried home. It was an election day or political day; a great deal going on. At that time he drank somewhat, and when he did drink much he was crazed. I don't know how often. I don't know that I saw him when he was, but I know that he drank some, and I think along in 1883, 1884, and 1885 he drank excessively, more than was good for him.

When I found him after his leg was fractured he was at a room in the St. Nicholas hotel, and he was crazed with drink and pain, and the doctor said some one gave him more drink after he was hurt, and the doctor was very angry about it.

This was the 24th day of October that he was hurt, and he was taken home the next morning and remained at home till the
148 9th day of February, 1885, when he went to the St. Nicholas hotel. Mr. Brennan was there and he was under his influence. I didn't see him. He remained away from home, but remained in La Fayette for seven months, and I suppose he was living at the hotel during that time. I met him at his office, but not in his own house during any of that time. He did not come to his own house, and for seven months following the 9th day of February, 1885, he was away from my home and his home and lived at the hotel there in La Fayette, and I continued to remain at home and lived at home.

The direct reason he gave for leaving home, as I understood it, at that time was a surprise to me. I learned that our son, who had taken him down-town in the evening, had followed him to a place of questionable repute, and he blamed me for sending the son there, and swore he would never go home again. I didn't know of the son going; that was the cause of the disruption; there was no disturbance; everything was pleasant, and we were kind. We had company. I had no talk with him about his leaving. He hadn't told me. I can remember the first time I went to his office after he left; the first time I had any business to transact or needed any money. I can't remember whether I had any conversation about his returning home or not the first time I went to his office. The second time I think I asked him to return to his home.

Q. What answer did he give you?

Which question was objected to by counsel for the plaintiff as incompetent.

The COURT: There is a question as to the propriety of the evidence, if it came through the right quarter; whether she is permitted to make a disclosure of that kind, as to matters transpiring between herself and her then husband, I don't know.

Mr. WALKER, for the defendant: She has already made a disclosure of what occurred at the Beaurivage flats after her husband left her.

149 Mr. ALDRICH: But not a word of conversation.

Mr. WALKER: When they have proved the condition of the plaintiff's feelings—that she was prostrated at the time; that she was shocked at the time by what her husband said and did, and particularly was shocked because he was not going to return to La Fayette—I would like to inquire what was said for the purpose of letting the jury know what occurred at the time and whether a sufficient cause was given for her prostration. There are matters which you can't prove except by conversation. They do not consist of overacts at all; no blows are passed; no violence used; nothing except temperate language, not only from one, but from both, and you can get at the state of the feelings from what the lips say rather than from what the hands may do. Now, it would be very singular, and it is a matter of the utmost importance in a trial of this kind, where the precise question is whether this defendant has alienated the affections of the plaintiff's husband, that we are to be limited to the inquiry of what the defendant did alone and are precluded from showing the relations of husband and wife before this defendant was brought into the case at all.

Now, it is true they were married. It is equally true that under our statutes this plaintiff is prosecuting a claim against this defendant to recover a sum of money which would belong to her even though her husband were living, and to no one else. The amount of money she can recover, if anything, depends upon the affection existing between her husband and herself prior to the time when this defendant was brought into the case. That will fix the value of his affection. Then the question arises whether there has been a disruption of that affection because of this defendant. Now, counsel for the plaintiff say we can prove acts; we can prove whatever was done by the parties, but we can prove nothing that was said by the husband and wife before the divorce, because they
150 were husband and wife, and that, in a matter affecting the wife's property, in a suit that she could prosecute in her own name if she had never been divorced, and whatever amount was recovered would belong to her personally, with which her husband could have no connection at all. In such an action, where the husband may testify to the value of the property, if it is a property matter—where the husband could give all the facts connected with the matter tending to show value; where the wife could do the same thing; where both husband and wife could do it—is it possible that in this case—this prosecution, this investigation of values—we can't show by her own admissions, in the presence of her husband, that years before this action was brought or thought of her husband deserted his home and went to another home to live, and gave at that time as his reason—and, more than that, at the time assured her—that he never would under any circumstances return to his home? Now, we can't prove the fact except from the language.

The COURT: The law seems absurd to exclude the testimony, but I don't know but it is within the rule. Can't you agree in setting

aside all those hair-splitting distinctions as to when and when not a husband or wife may testify, and let them both tell their story?

Mr. DEXTER, for plaintiff: The court above might not agree with us.

The COURT: But you can agree to waive it.

Mr. ALDRICH, for plaintiff: We take the position that a husband of the character this one has shown himself to be we don't want to hear at all.

The COURT: You have the statute here; you can read it. I think these parties ought to be allowed in a suit of this kind, after a divorce and marriage to another woman, and in a prosecution of this character, to tell their story. I think it is absurd, whether
151 it is the law or not, to shut out some testimony of the wife and some testimony of the husband on account of their former relations. That is my judgment of it outside of any technical question of what the statute may be. The law allows her to be a plaintiff in her own behalf. She is a party to the suit and can testify. The laws of the State and the laws of Congress allow it expressly. It is splitting hairs and a good deal of trouble to find out how far by law and under the statute they ought to be permitted to go, to testify under the permission which the laws of the State and Congress give. I would be glad if you would agree on something.

Mr. WALKER, for the defendant: I believe this matter was first suggested to me this morning on objections to certain questions that were asked the plaintiff, and I stated then as one of the causes of my objection that I did not understand that it was competent for the wife to testify against the husband or the husband against the wife, or for them to be witnesses in a case in which either was a party ever after divorce, and I suppose the authority I then had in my hand went to that extent; but during the recess of the court I have examined the statute, and my brother Aldrich said he had an authority directly against me, undoubtedly referring to the 71st and 78th Illinois Supreme Court Reports.

Mr. ALDRICH, for the plaintiff: Not at all, Brother Walker.

Mr. WALKER: Well, if you have any authority, that is one thing; but I now wish to state our position fully, and it is that if a conversation between these parties relative to the subject-matter of this action is ruled out by any statutory provision, then the whole action is ruled out for the same cause. It comes under the exception of the general statute that provides that a wife may sue in her own name about a matter in which she is personally interested
152 and her husband not join with her; and except for that provision of the general statute this action could not be maintained at all. As a matter of fact, in my opinion, if the statutes of Indiana were not what they formerly were this divorced wife could not prosecute this action at all. But they have a statute like our own, and under our statute and the Indiana statute the wife, during coverture, may prosecute an action in her own name for damages to her person and character or affections, so that under our statute, if there had been no divorce at all, if the relation of

I think perhaps there were bad women mixed up in it; perhaps they were worse than the men.

When I first discovered his drinking habits he did not seem to drink a great deal, but it seemed to grow on him. I don't know just when I first discovered it. I think, possibly, in 1880 or 1882. I discovered that he was drinking excessively, and that it grew upon him. He drank to excess, and it continued till he left La Fayette in June, 1886. From 1880 to 1886 this habit had been growing upon him all the time, and during that time I thought bad men and women influenced his conduct towards his home. I know they were bad men because he brought them to the house. One of them was Thomas Brannan. I didn't know anybody else as well as I did him. I think he brought Thomas Brennan to the house in the year 1880, 1881, and 1882. All along, for several years, he visited there. He was there before 1884. I don't know of any others that I can particularly mention that visited the house.

As to being jealous of other women so far as my husband was concerned, I sometimes had my feelings hurt, but I could not say that it was jealousy. My first positive convictions that he was going with other women, and improper women at that, were upon finding a letter, I think it was in August, 1883. I found it on the floor of our house, addressed to my husband. I should judge from the writing it was from a woman. It made me feel very badly. I didn't know the woman by reputation. Afterwards I rather thought
I knew her *m*y name. I took a copy of that letter. I have
156 not the copy with me. I found the original on the floor
amongst a number of Mr. Waldron's papers. He had thrown his coat on a chair and all the contents had fallen on the floor, and I restored them all to his pocket and hung it on the chair again. The next morning I saw him reading the letter at the breakfast table. The letter was unsealed. The seal was broken when I picked it up. I did not ask him any questions about it and never spoke to him about it for, I think, perhaps, it was ten days afterwards. I did not discuss the matter with him then at any great length.

I partially thought I located the parties, and I felt that they were in a house that belonged to me, and I asked him to have them removed. The matter was not a subject for discussion between us long at that time. It was dismissed. It might possibly have been referred to again, but was not a subject of conversation at all. I went on with my duties and tried not to feel any more troubled about it than I could possibly help. *I* course, I expressed my feelings to my husband about it.

It was the 7th or 8th of February, 1885, that my son followed his father into a house of bad repute. The finding of this letter by me occurred in 1883. A divorce between me and my husband was not a matter of discussion or consideration in 1883. I think while he was at the St. Nicholas hotel he wrote me a letter something in relation to that. In 1884 the subject of a divorce and separation between us was not a matter of discussion either verbally or by writing. I believe it was threatened by my husband.

I can't say that for years prior to 1883 I and my husband lived unpleasantly and had many scenes of an unpleasant character relating to his habits or his acquaintances with or attentions to other women. All that passed between us was of a kindly nature on my part, and, I think, he was somewhat silent. He didn't say very much
157 about it. There was remonstrance on my part. When I felt that he was drinking to excess I never said anything to him while he was under the influence of drink, but after it was over I advised and talked to him about it. I have no recollection of ever charging him with being unduly attentive to other women prior to 1880. I think we lived happily and pleasantly, and I think he thought a great deal of his home. The relations between my husband and myself were good and pleasant, and the matter of his attentions to other women was not a subject of unpleasant discussion between us at least six or eight or ten years prior to 1880. There might have been reference made to it in conversations between my husband and myself playfully, but nothing serious. I don't think I ever made any complaint about his attention to other women prior to about 1880.

From the time of our marriage down to 1880 nothing occurred between my husband and myself of an unpleasant character at all.

My husband remained at home from the time he returned from the St. Nicholas hotel in the fall of 1885 until he left for Chicago in 1886. During that time the matter of separation or living together was discussed, and there was talk of contemplating on his part of leaving me and separation from me. This was while Mr. Alexander was in Louisville for treatment, while he was sick, in February, 1886. Before that time no reference had been made to the subject. The matter of a divorce between Mr. Waldron and I was first discussed and referred to when he was absent at the St. Nicholas hotel. I think it was in February, 1885. That was after his leg was broken. He was brought home after his leg was broken in October, 1884. This matter was referred to at that time, and was not alluded to again. There was harmony between us, excepting I felt tried when he drank. It would have been a pleasant home if he had left drink alone and had left women alone. It makes
158 a man morose—he could not be considerate to his family; he could not talk to his son, and all those things, and he was silent. We did everything to please him and did our duty to him, but he didn't do his. No drinking man does. We didn't charge it up against him. We felt it was a weakness, which we hoped to overcome by our patience and kindness. Perhaps I am not willing to think he is as bad as you wish me to.

I had a conversation with Mrs. Emory Waldron over a letter that she took out of the office and opened and showed it to me. It was a letter the existence of which I knew nothing of until she brought it. It was a second letter from the same party as the one I had found. We compared the writing. I don't remember when it was we had this discussion. I think it was a short time before he came home. I don't think I showed any temper on seeing that letter. I did not on that evening in con-

versation with Mrs. Emory Waldron speak of the conduct of my husband and say that it had been so outrageous that I believed I would shoot him. I never in conversation made any reference to shooting my husband and speak of the life insurance that was upon his life. I never did in all my life. I have never been so enraged as to threaten and talk about shooting him.

Thomas Brannan was at our house quite frequently from the time my husband was confined to bed with his broken leg. I never took a pistol from under the pillow or from the bureau and pointed it at my husband and threatened to blow his brains out while Mr. Branan was there or at any other time. I never took a pistol in my hand and pointed it at any human being.

My husband was engaged in business at La Fayette in the spring and winter of 1886. It was the hay and grain business. He was in business when he left La Fayette and so advertised in the
159 papers that he had taken a business in Chicago that would require his attention from three to four days each week and expected to return to La Fayette, and so told me when he went away.

In September of 1885 I met Mr. and Mrs. Emory Waldron at Mr. Waldron's office, on the corner of Main and 5th streets. I had been to his office before that whenever my business required. My son was in his office. On that day I went there with my sister-in-law. I had called on her and she said, "Mary, I am going down to see Emory a few minutes," and asked me where I was going. I told her I was going out on the street. She says, "Come and go with me, then," and so I did. I didn't ask her to go with me to my husband's office. I did not state to her or other persons that I was going there for the purpose of inducing him to return home. It was an unpremeditated visit entirely. My husband did not refuse to return except in the inferest of his son. The condition on which he cam- was for us all. I did not at that time know of any contemplated divorce suit on the part of my husband against me. I had heard foolish threats. I think Mrs. Emory Waldron told me. I had heard rumours. I didn't pay any attention to it. It had not been a matter of discussion with my husband. I had one letter from him about it, that was all, when he first went away. I did not know that Judge Coffroth was retained at that very time to commence proceedings for separation.

The first time I came to Chicago after my husband left me was in July. That was the time I met him at the Beaurivage, and Mr. and Mrs. Emory Waldron were present at that interview. I went to their house and took tea with them before I went there, and they accompanied me to Mr. Waldron's office. I had sent word to Mr. Waldron by Henry Kirtland to meet me. Mr. and Mrs. Emory Waldron were with me most of that day, and that was in
160 the evening, and this day they were sent for by my husband to accompany me.

I think that interview down there lasted pretty much all that night. Part of the interview was false accusations of me. I did not go there for the purpose of setting myself right against these

false accusations. I didn't go there with anything but peace and love in my heart—to visit my husband. I did not at that time know that he was away from home to stay. He had not informed me that he should not return home. I expected that he would return home. I was told then that he would not return, which caused the shock to me. I was shocked and prostrated and was ill from the effects of it.

Q. Now I ask you what he said and what occurred.

Question objected to by counsel for the plaintiff.

The COURT: She testified on the direct examination that she was shocked at what took place. I do not think that is much testimony either one way or the other requiring a great deal of explanation. She can state what occurred, but not what was said.

To which ruling of the court counsel for the defendant then and there duly excepted.

A. I could not tell what occurred without stating what was said—what the provocation was.

Q. Was the shock caused by what your husband said?

A. Yes, sir.

Q. Now I ask you what was said.

Objected to by counsel for the plaintiff.

Which objection was sustained by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

—. The matter of the division of the property was not discussed at that time at all—nothing was said about it. He was in no condition to talk rationally that night. He had been drinking very hard. It was about seven o'clock in the evening, and I pre-
161 sume I did say that evening that he was not in a condition to discuss business. My opinion was that he was more crazy than sane. He had been drinking very hard for ten days, so Mr. and Mrs. Emory Waldron said, and they said he was not in a fit condition to conduct business. The matter of the conveyance of the La Fayette property was never spoken of in that conversation, and the offer was not made to convey to me all the property in La Fayette in trust for my son.

Q. Did you not say that you would not accept a conveyance of that kind, but it must be made absolutely to you?

Objected to by counsel for the plaintiff as going into the conversation.

The COURT: Ask her what the subject of the conversation was, but not what was said.

And said objection was sustained by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

Q. That discussion was kept up the greater part of the night?

A. His abuse of me was.
Q. What abuse was it?

Objected to by counsel for the plaintiff.

The COURT: She may state what he did, but not what he said. If his abuse consisted in his action, she may state it, but not what he said.

To which ruling of the court counsel for the defendant then and there duly excepted.

A. He didn't whip me; but I would rather he would.

Mr. WALKER: If she can't state what it was, what the abuse consisted of, I ask to have all her statements relative to the abuse withdrawn from the jury.

The COURT: I do not think they amount to anything as evidence. That is my judgment of that, because I do not see what the jury can infer from the whole testimony taken together—that she was shocked.

Mr. ALDRICH: I would like to have your honor qualify that a little. It is not immaterial, as it seems to me, in this case if
162 we wish to submit that, if it was the first time she heard he had permanently left his home, that can't be called an immaterial fact.

Which motion was thereupon overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

Q. What did that abuse consist of?
A. Accusations.
Q. What were the accusations?

Objected to by counsel for the plaintiff as incompetent and not proper cross-examination.

The COURT: The question is whether or not it is calling for conversation between husband and wife. I think she may state the nature of the charges that were made, but not give the conversation.

Mr. WALKER: I should be very reluctant to have this witness on her own behalf, in answer to a question of mine, give her impression of the accusations. The accusations consist in words used—the charges made. I put that last question for the purpose of calling out just what was said.

The COURT: I will sustain the objection. The court rules that the conversation is not competent evidence.

To which ruling of the court counsel for the defendant then and there duly excepted.

(The witness resumes:) The next time I visited Chicago I called on Mrs. Alexander at her residence, in May, 1887. I had an interview with her in the parlor. I have stated the interview exactly as it took place and all that occurred of any consequence. The

interview was entirely without any feeling or anger whatever, and was in just a quiet tone of voice. My mother was deaf and I was in the habit of speaking quite loudly. I didn't speak unusally loud that evening. I don't think that I spoke loud enough so that a person sitting upstairs with the doors all open could hear, for I sat near Mrs. Alexander. I have had some correspondence with Mrs. Emory Waldron about that matter. I received a letter from her and wrote a letter to her. Possibly in that letter I
163 might have said that I talked in a loud voice, because I was in the habit of speaking in a loud voice. I do not know whether Mrs. Emory Waldron was there or not; she informed me that she was not there. I have her letter, with her name signed to it, saying so. The letter is at La Fayette. I had a conversation with Mrs. Emory Waldron about the matter at La Fayette. She came there very soon after that—before I got the divorce. We were driving together.

The subject of my husband visiting houses of bad repute was discussed between Mrs. Emory Waldron and I.

Q. You may state what was said on that subject.

Which question was objected to by counsel for the plaintiff.

Which objection was sustained by the court.

To which ruling of the court the counsel for the defendant then and there duly excepted.

We have discussed that matter together. I did not complain of my husband visiting houses of bad repute. She knew more than I did, and would often tell me. It takes two to talk, and we very naturally discussed the matter. She informed me that my husband was in the habit of visiting these houses. It was in 1884 or 1885, I think, and also in 1886, when he was absent from home, particularly.

I do not remember of driving one afternoon with my horse and carriage on some street and the horse turning up to a house and stopping and me making a remark about the character of the house, and that my husband must have been in the habit of visiting it. I was riding with Mrs. Emory Waldron. Before that I took her out a great deal, but I have no recollection of the horse starting to turn up to the house that I believed to be of bad repute.

In my interview with Mrs. Alexander I have no recollec-
164 tion of stating to her that I called to see her on account of hearing that my husband was in the habit of visiting her house, and to say to her that his character was such that it would ruin any woman upon whom he called, and injure the character of any woman upon whom he called, or substantially those words. I don't think I said that. I will deny that I said it. I did not say anything to her about my husband's character being such as to make it disgraceful for her to receive his attentions. She did not ask me, "Do you wish me to exclude your husband from my house?"

She did not during that conversation ask me if I desired her to exclude my husband from her house and to compel him to desist from calling there, or words to that effect.

I was not intimately acquainted with Mrs. Alexander. I knew Mr. Alexander better, for I had met him; he had been to our house to visit, and I had often met him. I wrote a letter to him in the spring of 1885, when Mr. Waldron first went to the St. Nicholas hotel. I have a copy of that letter at home. I remember the substance of it. Possibly in that letter I did charge my husband with having left home and with going with bad women; and I did ask Mr. Alexander to intercede in the matter to persuade him to return home. I asked Mr. Alexander as his best friend. At that time he had left home and was living an improper life, as I supposed. That was after February 9th, 1885—after he went to the St. Nicholas hotel in the spring of 1885—and during the time of the absence I have testified to; while he was at the hotel.

At this point in the proceedings the court adjourned until Friday morning, January 24th, 1890, at 10 o'clock a. m.

And the court met pursuant to adjournment.

The court asked to have read to him the testimony of the witness as to what was said at the interview at the Beaurivage flats in May, 1887, on her direct examination, the evidence having been
165 taken by a stenographer and written out; and accordingly the testimony was read to the court down to and including the answer of the witness stating that she then for the first time learned "that he did not intend to return to his home."

The COURT: That statement of the witness was equivalent to stating what Mr. Waldron said, and the jury would naturally infer from it that he told her that he never intended to return to his home, because she did not mention any other means of ascertaining that fact. She went there to see him and talk with him, and it seems to me, to make that fair between the parties, the defendant should be entitled to examine her as to what was actually said; and then, if you wish, I will strike out the whole examination as being incompetent under the statute, or else I will strike it out now, if you please, without cross-examination, or you may cross-examine her and then I will strike it out. I will endeavor to keep within the rule of not permitting conversations to be introduced, and I think that was the effect of allowing the introduction of this statement.

Mr. ALDRICH: I submit that the statement of the fact is independent of the conversation.

The COURT: It is not independent of the conversation if she learned it from him. That is what the jury would naturally and inevitably infer, and it can't possibly be proper without allowing a cross-examination of what took place on that occasion. I propose to hold to the statute; and in order to do that I think I will hold that evidence incompetent, altho' it does not seem there was any immediate objection to it. There were objections on other occasions to the same class of testimony, and I will give the defendant the choice of having it stricken out just as it is or give her counsel the privilege of cross-examining the witness as to what actually took place there and then striking out the whole testimony. I

know there is a rule of evidence that if incompetent evidence is admitted without objection it does not give the right to cross-examine concerning it when objection is made to the cross-examination. But we have been trying to follow the rule not to admit conversations between husband and wife. We will follow the line as closely as we can.

Mr. DEXTER, for plaintiff: Something was said here yesterday about waiving the question as though it were a question of privilege. I don't understand that it is. I understand that the rule is founded in public policy forbidding husband and wife being witnesses for or against each other. It is not the interest of the parties, but is based upon public policy, and we are utterly incompetent to waive it. It is not permitted us to do so. Such are the authorities.

166 The COURT: The statute allowing a good deal of what took place between the plaintiff and Mr. Waldron to be offered in evidence, if the parties to this suit should submit, if they should waive the restriction of the statute, I do not think there is any law of this court which would forbid their testifying. Perhaps we had better adopt Mr. Dexter's suggestion to strike that out as it is and not transgress the rule any further. I have some doubt under the statute whether absolute justice would not require a cross-examination where the witness goes on and testifies in general language to the substance of a conversation. Suppose you wanted to prove a contract. She goes on and testifies to the transaction; that she made a contract with her husband at such a time, so and so. As it appears *that* the other party can't cross-examine and find out what was said to find out whether there was a contract made or not as a fact. I don't say that is what is contemplated by the statute; and so in this case the witness says she was shocked, and she learned there for the first time that he never intended to return to his home. It seems inconsistent that she can state the substance of what took place, and yet they can't have the ordinary privilege of cross-examination. I hardly think that could be what was contemplated by the statute. It is rather puzzling to know what the statute does mean exactly. I think the court will be satisfied to strike out the statement.

Mr. WALKER: I don't think the statute will necessarily bear as strict a construction as the court is inclined to give it. If there was any purpose of the legislature at all when this statute was enacted it was to prevent making public the confidential communications or conversations between husband and wife. They were regarded technically as something sacred. They occurred in the privacy of their home, and the public should not know anything about it and each should be precluded from detailing those conversations; but when they occurred in the presence of other witnesses, then is there any reason why they should be precluded? A conversation between a husband and wife—that is a matter that goes to the *res gestæ*. The matter upon which we desire to cross-examine this witness has particular reference to the testimony that she has already given as to what she learned from her husband, and she must necessarily have learned it from what he said at that interview at the

Beaurivage flats, not the confidential communication in a conversation between husband and wife in private, but a conversation that occurred in the presence of several witnesses, not a conversation that was sacred at all or private at all or confidential at all.

This is the provision of the statute: "That nothing in this section contained shall be construed to authorize or permit any such husband and wife to testify to any admission or conversation of the other."

167 That does not preclude the husband or wife from testifying to any matter or statement he or she may have made, but she can't testify as to conversations or statements made by the husband nor can the husband testify to conversations made by the wife if it was a conversation that was not a public conversation. It seems to me that what she has said in the presence of the jury, that she was prostrated by a nervous shock, that the jury should hear what was said, and then if there is a motion to exclude all the evidence it should be passed on when that motion is made.

The COURT: I doubt whether it would make any difference whether others were present or not; the statute does not confine it to that. The court is not prepared to say now but what the statute is intended to exclude conversations and communications made by husband and wife in the presence of other witnesses. I can't say but what such communications might be considered as confidential within the meaning of the rule. I am rather inclined to think that they would. If a husband and wife see fit to make confidential communications in the presence of another person I hardly think that would justify the relation of those conversations by one party or the other. I am convinced in my own mind that the statute should not be construed in a manner to result in such injustice and hardship as that a witness should not be cross-examined on a matter on which she has testified in chief. The inalienable right of cross-examination must attach to her statements, and unless it is absolutely necessary to draw such a conclusion the court would not draw the conclusion that it was the intention of the legislature to exclude fair cross-examination under any circumstances. If the cross-examination is had it should be limited to what was said on the direct examination. I thought that the parties would be content to let it go and instruct the jury in regard to it. Still there is a certain objection to that. It has already gone to the jury, and the jury could hardly tell how much they might be influenced by that, although there was a formal order to strike it out. If counsel prefer I think they should have the right to cross-examine, but it must be confined strictly to a cross-examination on the statement made by the witness in direct testimony.

(Witness resumes:) At the interview which occurred at the Beaurivage flats in July, 1886, Mr. and Mrs. Emory Waldron and Henry Kirtland were present, and I think they heard the conversation that occurred between me and my husband. I went there with Mr. and Mrs. Emory Waldron for the purpose of visiting my hus-

band in peace and love, not to have any interview about any
168 particular or special matter, and whatever conversation occurred between me and my husband there was a mere incident to my visit. I did not call there for that purpose. I don't know that I made any statement to Mr. and Mrs. Emory Waldron why I wanted to visit my husband there. I don't know that I stated to them the object of my visit, because it was a natural visit. I wanted to see him.

I think it was about seven o'clock in the evening we called there at his rooms, and I think it was about two days after that when I left the rooms. I don't think Mr. Waldron left the room that night; there were two connecting rooms there and the door between them stood open; there were beds in each room. I sat in my chair nearly all night, I think—till day dawned, anyway. I think the conversation was prolonged till midnight or afterwards; during the balance of the night I sat in my chair facing the window, and after I had calmed myself down from my crying I turned round and saw Henry Kirtland lying on the lounge; there was nobody else there; the bed was unoccupied and I remained in my chair all night till day dawned; then I stepped into the next room; my husband was lying on the bed. I laid right down on the foot of the bed beside him and dropped asleep.

In that interview the matter of the conveyance to me of the property in La Fayette, the title to which was in my husband, was not a subject of conversation. This interview at the Beaurivage flats was on the 8th of July, 1886, about a month after my husband had left La Fayette.

Q. What, if anything, did he say at that interview about returning home?

Counsel for plaintiff objected to the question as incompetent under the statute.

169 The COURT: I think you may show everything that was said on that occasion. If your rule is correct, that this is something that can't be waived, you each have exceptions enough on this point to reverse any judgment that may be rendered either way. You have both got testimony in contrary to the statute.

Q. I will ask you if Mr. Waldron did not at that time and in that interview say to you that he should not return to live with you again.

A. I think he did.

Q. Did he not at the same time say to you that he had left you in 1884 and again in 1885 and separated from you at that time, never intending to return; that he only returned to you on account of his son and upon the promise that there should be no further controversy between you over any matter; that he found he could not live happily with you and left again, or substantially that?

A. I don't remember of him saying any such thing. I was crying and under a great deal of excitement. I don't think he said any such thing.

Q. Did he, in that conversation, allude to his having left you in 1884 and again in 1885 with the determination expressed to you that the separation then was final and complete on both of those occasions?

A. To the best of my knowledge he did not.

Q. Did he, in that conversation, refer to his leaving you in the summer or fall of 1884, and again in February, 1885?

A. He did not; he was almost insane that night. I think his mental condition, resulting from drink, was such that he was not in a condition to talk about his affairs. I thought he must have realized what he was talking. I know I was very much shocked at what he said, at his determination not to come home
170 again to us. It would have shocked any one, and I cried. I don't remember how long this conversation had progressed when he told me that.

Mr. DEXTER, for plaintiff: As Mr. Walker is thro' with his cross-examination on that point, let an order be entered that all of this testimony pertaining to that interview at the Beaurivage, both the direct and the cross examination, be stricken out.

Mr. WALKER, for the defendant: We shall object to that. We want the objection preserved in the record and our exception. If any of the evidence is to be stricken out it should be pointed out now, so there can be no question about it hereafter. It is very easy for counsel to indicate what evidence they want stricken out.

The COURT: I think I will permit that order to be entered striking out all the testimony as to conversations between the plaintiff and her husband on that occasion when she came to see him at Chicago and when she says she was shocked at learning he never intended to come home to live with his family in La Fayette.

To which ruling of the court counsel for the defendant then and there duly excepted.

That interview occurred one month after my husband left La Fayette. When he left La Fayette I understood his business would only keep him a part of the time in Chicago and that he would return from time to time to La Fayette. After I had this interview with him at the Beaurivage, a month after he left his home at La Fayette, I did not think so much about his statements made in the interview, because I knew his condition when he made them, and I though- his better impulses and better judgment would come to his rescue and he would return to us. I think it was his better judgment and better impulses that induced him to return in 1885 after he left me and after being absent seven months.

He might have been absent from home a few days in 1884, but he did not leave his home in 1884. He did abandon his home in February, 1885, and I believe it was his better impulses that induced him to return home again in September, 1885, seven
171 months after he had left, and nothing but his better impulses. I don't think that his better impulses were promoted or superinduced by pledges I made to him in the fall of 1885, particu-

larly. Possibly what I said to him may have influenced him. I know that was my idea. I think my husband loved me then, although he had been away. Notwithstanding all I have said as to his habits and as to his receiving letters from other women and his leaving home for seven months consecutively, I think I was still the first with him.

I say emphatically that there had not been numerous unpleasant occurrences between me and my husband amounting to domestic quarrels from the time of our marriage down to 1880, and I don't say there were any quarrels from June, 1880, down to 1886, when he finally left for Chicago. I don't remember any quarrels. What I mean by a quarrel is where both got excited and angry, a quarrel in which each one participated. Mr. Waldron did not become enraged at me frequently at something which had occurred or that he fancied had occurred.

He did not charge me to my face with directing my son to follow him down town to see where he went. I knew that there was such a person as Mrs. Scott, the wife of Mr. Waldron's secretary. She lived in La Fayette, and her husband was employed by Mr. Waldron in his railroad office I think in 1881 or 1882. Perhaps it may have been about 1879 or 1880. I do not remember of Mrs. Scott coming to our house one evening and bringing a telegram to my husband that excited my anger to a violent degree. I do not remember of Mr. Scott and his wife coming and bringing a telegram to Mr. Waldron, and that after they left and after we had retired to bed having a quarrel with Mr. Waldron over that telegram, and that he left his bed, got up, dressed, and went down town
172 and I followed him.

I know Parker Byer's saloon in La Fayette; everybody in La Fayette knows it, of course; it is a conspicuous place. I do not remember that he got up out of bed and went down town to that saloon; that I followed him down there and then went over to Crouch's livery stable or some other livery stable and there took a carriage and was driven back home. My son, Winnie, had a pony and cart at that time, and I was taken home by that pony and cart late at night.

I will not say there was not such an occurrence, but it did not happen in connection with a woman you speak of or at that date. I had discovered that there were parties of a questionable repute living in a house that belonged to me. I asked him to remove them and he became somewhat angry and got up. He had just gone to bed. He got up and dressed himself, and I asked him where he was going. He said, "Down town," and I got up and dressed and I walked down the street after him. It was early in the evening—hardly nine o'clock; there was no telegram brought at all and Mr. and Mrs. Scott were not in the house on that evening, and the only subject of discussion between us was the fact that disreputable people, as I believed, were in that house as tenants. I think that was in the fall of 1884. This is the same matter I testified about before—some women of an immoral character being in a

house that belonged to me. I had heard that my husband visited that house and I believed that he did.

I saw several letters from the same party that the letter was from which I found in his pocket, but there were different initials signed each time; the writing was the same. They purported to be from a party by the name of Greenleaf. I did not show that letter
173 or some of the letters to several of my lady friends in La Fayette or to Mrs. Sarah E. Eldred. I never showed them to her, and in talking with her I don't know that I referred to any one letter in particular. Mrs. Eldred had been an inmate of our family, and I might have talked with her about these letters I had found. I might have talked with Mrs. O. C. Goldsmith, of La Fayette, about the letters, but I never showed them to her. I did not talk to other friends and acquaintances of mine about them; only to those two. Mrs. Emory Waldron talked with me. We were sisters practically, and she brought one of those letters to me. That was in the fall of 1885, a short time before Mr. Waldron came home after his absence of seven months. Mrs. Emory Waldron and I were driving together, and she went up in the office and found a letter there and brought it down and opened it in the phaeton. She read it first, and then I did, and she opened it. It was directed to Mr. Waldron, and she went to his office and got that letter; opened it while we were driving and read it first and then handed it over to me.

I remember of my son bringing home to me a letter addressed to Mr. Waldron in a lady's hand and giving it to me while Mr. Waldron was absent. I did not see him take the letter from Mr. Waldron's office. That was shortly after Mr. Waldron came home when he had been absent for seven months. That letter was from the same party; I kept it. I talked to Mr. Waldron about it very kindly, and he received my talk kindly. At the time I talked to him he had been very sick and was recovering; and I also found another letter. He was very sick in the fall of 1885 for a few days and we thought he would die. It was after he had returned home in the fall of 1885. He was convalescent when I spoke to him about this letter. The doctor had said that he would die, but the danger period had passed when I talked to him about
174 the letter. Many times he did not say anything when I talked to him about the letters. He went about his business. He was living at home at the time my son brought the letter and gave it to me, and I retained that letter.

Mr. Emory Waldron did call at my house and say that some letters of my husband had been taken from his table; that he was responsible for the office and the mail, and requested me to give him that letter to return it to the office from which it was taken, and I declined to do so.

Mr. Waldron might have been temporarily absent from home at that time on business. He was living at home, though. It was in November, 1885, after his return. I don't remember just where Mr. Waldron was at the time. He was away on business a good deal.

He might have gone to Indianapolis or Cincinnati or Chicago. He went away a great deal on business trips.

I never called at Mr. C. R. Cummings' office upon any errand whatever. I don't know and never did know where his office is.

I had no personal communication with my husband at all about the divorce proceedings that I instituted in La Fayette in 1887 before the suit was commenced except what I had at the Grand Pacific hotel when I went there to see him in May of 1887. He insisted that I should get a divorce. The matter was not discussed between us at that time at any length. The method of procedure was not discussed and agreed upon, and there were no terms entered into at that time. I don't know whether the interview I had with him was one hour or two. The property matter was not discussed at that time by me, not as the entire subject-matter of our conversation. I pictured to him my inability to live and the property matter was mentioned. It was not at that time arranged that
175 all the property in La Fayette belonging to Mr. Waldron should be conveyed to me, and that was not arranged at any time in any conversation I had with Mr. Waldron. I had no personal interview with him or conference with him relative to the divorce after our meeting at the Grand Pacific hotel, and I never met him again till after the divorce, and what I have testified to about the interest he had in the divorce is entirely hearsay except what occurred at the Grand Pacific hotel. It was information I derived from other sources and not from my husband. The consummation was thro' his agent.

I did not claim at the time the divorce was granted that when I married Mr. Waldron I was possessed of fifteen thousand dollars. I never stated so to anybody. If there was anything of that kind stated in my divorce proceedings at La Fayette it was a mistake.

The value of the property conveyed to me at the time the divorce was procured might possibly have been thirty thousand dollars if there had been no debts against it, but there were a great many debts against it, and it would not have amounted to that value to me. The debts I refer to were mortgages that were existing at the time Mr. Waldron left La Fayette. I do not know all together the amount of those mortgages. One farm had two mortgages on it. I don't remember the amount. The town property was not mortgaged or incumbered. The one piece of property was swept entirely away by the mortgage, and two thousand dollars of that came onto the house which was incumbered. That was the deficiency. The property was permitted to be sold for the mortgage debt, and it did not sell for enough to discharge the debt, and there was a balance over.

I did not pay anything for procuring the first divorce—the
176 one which I procured from Mr. Beauchamp, and I did not pay anything for procuring the second divorce—the one from Mr. Waldron.

I used to be acquainted with Mrs. Rhodes, of La Fayette, Indiana. She was a personal friend of mine. She called to see me in 1884, as a friend, while Mr. Waldron was absent, but I don't remember

saying to her that my husband had left me, and that his habits were bad, and that he was running after other people, and that he had said to me that he should pursue his own course, and if I did not like it I could separate from him. She seemed to have a general knowledge of Mr. Waldron's life and habits, and we discussed them, but I don't think I ever made such a statement as that to her.

Redirect examination.

By Mr. ALDRICH, for the plaintiff:

There was a deficiency of two thousand dollars after the sale of the piece of property under the mortgage which came over on the homestead. I sold some of the personal property of the home place after the conveyance was made to me—things I thought I could get along without and things in the house I could do without—some carpets off of my floors, and I only raised about five hundred dollars in money, and then borrowed enough money to make up the rest and paid off that debt. I am paying interest on that borrowed money. The farm that the mortgages were on was lost entirely.

As to my knowledge of the arrangements about the divorce proceedings, it is a fact I had letters from my husband. (Witness identifies letters which she says were addressed to her as follows: Exhibit "B," dated December 1st, 1886; Exhibit "C," dated October 5th, 1886; Exhibit "D," dated December 4th, 1886; Exhibit "E," dated January, 1887; Exhibit "F," dated July 12th, 1886;
Exhibit "G," dated October 12th, 1886; Exhibit "H," dated
177 May 26th, 1887; Exhibit "J," dated November 8th, 1886, as letters received by her from her husband at about the times of their dates, and states that she thinks she replied to these letters.)

The reasons I had for supposing that Mr. Waldron knew of my prior history at the time of his marriage to me was because he became acquainted with my intimate friends and neighbors at the same time he became acquainted with me, and visited with them and saw them at our house, and also went to their houses. My history was commonly known to my intimate neighbors and friends.

Disturbances and unpleasant occurrences between myself and my husband were not frequent, and after these disturbances there were reconciliations and repentances on his part, and he was again a good and affectionate husband and we lived together as man and wife. At the time he left me, in June, 1886, the condition of affairs was very pleasant—never nicer than that day.

On his return home, after his absence of seven months, at the time he was at the St. Nicholas hotel, he acted very gently and tender, and was very glad to be in his home, as we were glad to have him there. He was moved to tears at that time.

Q. State whether you had any family celebration of his return—of the prodigal son's return?

A. I invited his brother and wife out to dinner with us that evening. We had a family dinner.

At the time he broke his leg I think he was confined to his bed a month, if not longer. During that period I cared for him, with

the aid of Winnie and the physician. He was at our home. He was brought home the next morning after the accident. I was driving when I heard of the accident. I had halted and my son came to me and told me. I went at once to him and removed him as soon as he was able to be moved. I think it was in Janu-
178 ary some time before he left the house. He was hurt the 23rd day of October, 1884.

Recross-examination.

By Mr. WALKER, for the defendant:

I supposed that he knew of my marriage to Mr. Beauchamp and the birth of my son shortly after my marriage and of my divorce from Mr. Beauchamp, because my acquaintances all knew it in La Fayette. My aquaintances did not talk to me about it. He knew of the divorce. My acquaintances did not talk to me about my misfortunes with Mr. Beauchamp, and I don't know that they talked to him. It was never mentioned or referred to in the presence of Mr. Waldron when I was present.

At the family dinner, when Mr. Waldron returned home in September, 1885, there was nobody present except Mr. and Mrs. Emory Waldron, my son, Winnie, myself, and husband.

Mr. Waldron came home by his own request on the following morning after his leg was broken. I think there were others standing by in his room that heard him make the request. One person in particular was Mr. Behm's brother, who is now dead. I was crying, I know, at the time. There were several there. I don't know who. I was excited. I think Emory Waldron was in the room. Mrs. Emory Waldron was not there. I could not say that Emory Waldron sat by the bed when Mr. Waldrom made that request or not. I asked him when he wanted to go home. He certainly went at his request. I did not request it.

179 Thereupon counsel for the plaintiff offered in evidence the deposition of JAY H. ADAMS.

To the reading of which deposition counsel for the defendant objected on the ground that the deposition was immaterial and incompetent and was included in the motion to suppress the deposition filed by counsel for the defendant.

Which objection was overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

Said deposition was as follows:

My name is Jay H. Adams. I am 41 years of age; live in La Fayette, Indiana, and am practicing law. I have personal acquaintance with the plaintiff, Mr. Mary A. Waldron. I have been acquainted with Edward H. Waldron for a number of years.

On the 7th of August, 1886, I left La Fayette for New York city in company with Albert Wiler. We went East on the Pennsylvania road on the limited express from Fort Wayne. I saw Mr. Waldron

on the train on that occasion. When I saw him he was sitting at a table in the dining car with either one or two ladies. My impression of it is indistinct, but it is that he was in company with two ladies. I have no recollection of seeing him except on that single occasion. I have no further knowledge of that subject.

180 Thereupon counsel for the plaintiff offered in evidence questions and answers from 1 to 17, inclusive, of the deposition of Albert Wiler.

To the reading of which in evidence counsel for the defendant objected on the ground that the same was irrelevant and incompetent, and that it was a part of a deposition which had been included in the motion filed by counsel for the defendant to suppress.

Which objection was overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

The portion of said deposition so read in evidence was as follows:

My name is Albert Wiler. I am 44 years of age; reside in La Fayette, Indiana, and I am a merchant. I am acquainted with the plaintiff, Mary A. Waldron, and have known her for over 25 years. I am acquainted with Edward H. Waldron, and have known him ever since he was married to the plaintiff.

In the month of August, 1886, I went East from La Fayette, in company with Mr. Adams, the witness who has just testified, on the limited express train going East. On that occasion I saw Mr. Waldron in the dining car. I think it must have been in Pennsylvania, from the fact that the limited train reaches Pittsburgh at 7 o'clock, and we took breakfast there.

I first saw him coming from the sleeper into the dining car. He was accompanied by two ladies dressed in deep mourning. They came together with Mr. Waldron from the sleeping car into the dining car. I did not see them after they were in the dining car.

181 Thereupon counsel for the plaintiff called the defendant, JOSEPHINE P. WALDRON, as a witness, and proceeded to examine her as to her pecuniary circumstances and financial worth.

To which testimony and all testimony on that subject counsel for the defendant objected on the ground that it was immaterial and incompetent.

Which objection was overruled, the court holding that the pecuniary condition and financial worth of the defendant might be a material fact in the case.

To which ruling of the court counsel for the defendant then and there duly excepted.

Thereupon, in lieu of the testimony of the defendant and without waiving the objection to the competency and materiality of the evidence or the exception to the ruling of the court, it was admitted, for the purpose of the trial, that the defendant was worth the sum of $150,000; that her entire estate did not exceed that amount.

Testimony of Winfield W. Waldron.

Called on behalf of the plaintiff and examined by Mr. ALDRICH:

My name is Williard Winfield Waldron; I reside in La Fayette, Indiana, and am a son of Edward H. Waldron and Mary Waldron, the plaintiff. I am in my 21st year. In June, 1886, I was living in La Fayette, at the time my father went away from home. At the time he went away it was not known that he did so permanently.

I believe at that time he had accepted a position with the
182 Deeds Metallic Packing Company, and their office was in Chicago. He said he expected to spend a part of the time each week in Chicago in their interest and a part of the time at home. He said he would return home part of each week, and he wrote me letters saying he would return home. I think Mrs. Waldron was present at that time. I don't remember of anybody else being present. At the time of leaving home my father was affectionate.

I was living at home in 1884 and 1885, at the time my father was living at the St. Nicholas hotel, from about February, 1885, till that fall.

I came to Chicago about the first week in September, 1887. My father left home in June, 1886. I was here in Chicago with my mother in July, 1886. I believe my father was living at the Beaurivage flats, on Michigan avenue and Van Buren streets, at that time. I was not present at the meeting between him and my mother. I think I saw my mother there the evening of the day they had the interview, or possibly it might have been the next morning; at the time when I saw her she was in the apartment occu-ed by my father.

Q. What was her condition at that time?

Objected to by counsel for the defendant; which objection was overruled by the court.

A. She was in a heavy sleep, I believe, when I came there—in a sort of insensible state; it continued for several hours after I arrived. I think she remained there for two days, possibly three, before we returned to La Fayette.

Q. You may state, if you know from anything your father told you, who represented him in his matters at La Fayette after his absence.

183 Which question was objected to by counsel for the defendant.

Mr. ALDRICH: I want to show that he put Robert Davie in charge and afterwards Mr. Behm as his attorney, and that he was the moving party in procuring the divorce.

Which objection was overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

A. I do. I know that my father did take an active part in pro-

moting these divorce proceedings. I know this of my own knowledge.

Q. You may state what he did toward securing the divorce proceeding and inducing your mother to procure a divorce.

Which question was objected to by counsel for the defendant.

The COURT: He may answer what he knows of his own knowledge as to what his father did.

And thereupon said objection was overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

A. He first requested me and then advised me. I don't know as I can state what he did without stating what he said, because what he did was verbal. He gave me directions. First it was request, then a demand, and finally threats to advise my mother to obtain a divorce from him. He said that the property was then incumbered and would be swept away immediately unless a divorce was obtained.

Q. What, if any, threats did he make concerning the payment for further supplies and support?

A. He said he would not be responsible for any part of the
184 debts. I think Robert Davie employed both the attorneys to procure the divorce.

Q. Who was Robert Davie?

Which question was objected to by counsel for the defendant.

The COURT: From your own knowledge you may state what relation he sustained to your father.

And thereupon the court overruled said objection.

A. He was agent of my father—transacted my father's business. I can't say exactly which person paid the attorneys who procured the divorce, but I know it was between Mr. Davie and Mr. A. O. Behm. They had the settlement of that affair.

Q. You may state whether or not your mother desired to procure the divorce.

A. She did not.

Counsel for the defendant objected to the question, and moved that the answer be stricken out.

Which motion was sustained by the court, and the answer was ordered to be stricken out of the record.

Cross-examination waived.

185 Counsel for the plaintiff thereupon offered in evidence a certified copy of the record of the divorce proceedings of the plaintiff from Mr. Waldron.

Mr. WALKER, for the defendant: I object to that record on the ground that there are certain charges made in the petition, as it is called under the Indiana code of practice, reflecting upon the char-

acter of the defendant made by the plaintiff herself in the case which she instituted in Indiana without the knowledge and certainly without the approval of the defendant here. Otherwise we we have no objection to it.

The COURT: I will admit the record for the purpose of showing the divorce, but that portion of the declaration which reflects upon the character of the defendant will be omitted; it will not be read to the jury.

Mr. WALKER: The fact that the plaintiff procured a divorce on her own petition from Mr. Waldron has already been proven by the evidence in the case and will not be denied. We admit the fact.

Mr. ALDRICH, for the plaintiff: We don't want that. We want this to go in as a record, and your honor may control it by such instructions as you think under the circumstances you ought to give. The record is an entirety and is properly certified. We want it for everything. We propose to connect the defendant with this.

Mr. WALKER: If they connect her with it I shall withdraw all objections to it, but I object to it going in evidence till they make the connection.

Mr. ALDRICH: It is a fair question of argument whether we have not made the connection of this defendant with these proceedings already.

The COURT: The plaintiff's declarations in the complaint in this case are not evidence at all. You favor the admission on the supposition that Mr. Waldron himself knew about these allegations in the complaint and directed the proceedings.

Mr. ALDRICH: Not only that, but also on the fact that we have already shown in the evidence that Mr. Waldron was the guest of the defendant; lived in her house; that they were indulging in embraces, kisses, and terms of endearment at that time, and that the divorce proceedings followed very soon after. I submit it is a circumstance to be taken into consideration for the purpose of determining whether or not at that time she did not know and was not concurring in all the steps that were necessary for the
186 purpose of severing this tie in order that others might be entered into. I want the record for every purpose for which we can legitimately use it in argument.

The COURT: It is competent evidence to go to the jury if you can show that the defendant was connected with it or cognizant of it. Still I do not see how that would make the plaintiff's allegations in the declaration competent evidence unless the defendant knew about the divorce proceedings or helped to institute them. I don't think those declarations reflecting on the character of the defendant in this case ought to go to the jury as evidence. You have had the witness who made the declaration on the stand and she has testified to everything she knew about it; to take her declaration in a proceeding for divorce as evidence of the truth, I do not think that ought to go to the jury. She has testified to all she knew about Mrs. Alexander's connection with the affair. You want to add to that her outside statements, made several years ago. Your proposition to admit

the record as evidence of the divorce is perfectly consistent and proper, but to admit it for the purpose of proving certain issues in the case, it seems to me, is entirely improper. If there is sufficient evidence in the case to go to the jury that the defendant in this case instituted the proceeding, or that Mr. Waldron did it with her knowledge and consent; if there is anything in the case that you can argue to the jury that fact, or that he was responsible for this part of the declaration, it might be competent; but it seems to me that it is a little too far fetched under the testimony so far. Of course there is some evidence tending to show that he wanted her to get a divorce, and you have marked letters which are not introduced, I suppose, on that subject. How much there will be to show he instituted those proceedings I don't know. I hardly think there is enough so far to make the defendant responsible for the declarations of the plaintiff in that pleading.

Mr. WALKER: There is not one particle of proof up to the present time that Mr. Waldron had the slightest suspicion that those charges were made against Mrs. Alexander. He had no knowledge of it and never directed it. He had no suspicion that they were made.

The COURT: I do not see any objection to introducing it for the purpose for which you proposed it, but to introduce it for the purpose of proving a distinct issue here by declarations in that complaint I don't think it will be competent. If you expect to get a verdict here you ought not to be too anxious to get in evidence that is improper.

Mr. ALDRICH: That is not what I want to do, your honor. I do not want to offer them as her declarations at all. I want to
187 offer them as a part of the record. You can't admit a portion of a record for any purpose. We have got to have the record as it is certified here.

The COURT: If you introduce evidence to make it competent to charge Mrs. Alexander with responsibility for these declarations it will be all right. That portion of the complaint which reflects upon the character of Mrs. Alexander cannot be read.

Mr. WALKER: I object to any portion of that record going in for any purpose, because it is not a record that binds the defendant at all, and it is not a record of any case to which she was a party or in which she was a witness. I wish my objection and exception entered to it going in for any purpose.

The COURT: I think it is competent evidence, because it shows conclusively to all the world that they were divorced at that time.

And thereupon the court ruled that the said record should be admitted in evidence.

To which ruling of the court counsel for the defendant then and there duly excepted.

188 *Certified Copy of Divorce Proceedings at La Fayette.*

Pleas held before the Honorable John M. La Rue, sole judge of the superior court of Tippecanoe county, Indiana, and at the May term thereof, in the year of our Lord one thousand eight hundred and eighty-seven, to wit:

MARY A. WALDRON
vs.
EDWARD H. WALDRON. } Complaint for Divorce.

Be it remembered that on the 20th day of June, A. D. 1887, the above-named plaintiff, by William C. Wilson, her attorney, filed in the office of the clerk of said court her complaint against said defendant; which said complaint, together with precipe for process endorsed thereon, reads as follows, to wit:

THE STATE OF INDIANA, } ss:
Tippecanoe County,

In Superior Court, to May Term, 1887.

Mary A. Waldron, plaintiff, complains of Edward H. Waldron, defendant, and says:

1. That she now is and for more than twenty years last past has been a *bona fide* resident of the city of La Fayette, township of Fairfield, county of Tippecanoe, Indiana.

2. That on the 17th day of September, 1865, she, said plaintiff, and Edward H. Waldron, the defendant, were married, at Syracuse, New York.

3. That Willard W. Waldron, an infant of the age of 18 years, is the only child of said marriage.

4. The plaintiff avers it to be true that in everything she has been to the defendant a faithful, loving, and dutiful wife, in all things fully observing her marital vows.

5. The plaintiff avers that the said defendant has not been to said plaintiff a good, faithful, and kind husband, but she charges, on the contrary, that he has been unmindful of and broken his marital vows, in this, to wit:

A. That he has for more than a year past been guilty of "cruel and inhuman" treatment of this plaintiff, in this, that he has become enamored of one Josephine P. Alexander; * * * that he refuses and for the last year has refused to return to his home or to this plaintiff, and also refuses to provide for this plaintiff's support, but, on the contrary, has absolutely refused so to do, giving orders to his agents to do nothing for the support of the plaintiff, and threatens by his agents to take and carry away all of the household goods and to drive her from their home; that she has remonstrated with him in regard to his course, but is only met by scorns and rebuff; that plaintiff charges it and believes it to be true that defendant's sole and only purpose for so doing is induced by his attachment to

the said Josephine, and that at his own instance * * * he has pursued such a course of treatment towards this plaintiff as
189 to make it intolerable any longer to endure with safety to her health or life.

6. The plaintiff further avers that at their marriage the plaintiff was worth about $15,000 in property; that *plaintiff* was worth nothing, and that by their joint earning they have accumulated an estate, which said defendant now has, in real and personal property of about $30,000.

7. The plaintiff prays for a decree of divorce for the misconduct of the defendant on account of his cruel and inhuman treatment of this plaintiff; she also asks alimony in the sum of $10,000. She further asks the personal custody of the said Willard W. Waldron on the ground that the said defendant, by reason of his conduct and habits, is unfit to have said custody, and for her general relief.

MARY A. WALDRON.

W. C. WILSON, *Att'y for Pl'ff.*

THE STATE OF INDIANA, } ss:
Tippecanoe County, }

Mary A. Waldron swears that she is plaintiff in the foregoing action for divorce; that she has resided in the city of La Fayette, Fairfield township, Tippecanoe county, Indiana, for more than twenty years immediately previous to filing this complaint, less a short time some years ago, when she was in the State of Missouri.

MARY A. WALDRON.

Subscribed and sworn to before me this 20th day of June, 1887.

HENRY C. TINNEY, *Clerk.*
W. W. BURROUGHS, *Dept.*

Precipe.

Clerk:

Issue summons to Tippecanoe Co.

WM. C. WILSON, *For Pl'ff.*

And thereupon summons was issued in accordance with the above precipe, and this cause was placed upon the bench docket of said court as a cause therein pending.

Be it remembered that at a term of said court began and held at the court-house, in the city of La Fayette, on Monday, the 16th day of May, 1887, the same being the third Monday in said month and the time fixed by law for holding a term of said court, before the Honorable John M. La Rue, sole judge of said court, the following proceedings were had in the above-entitled cause and entered of record in the order book of said court on the days and dates indicated as follows, to wit:

TUESDAY, *June* 21*st*, 1887—32nd day.

MARY A. WALDRON
vs.
EDWARD H. WALDRON. } 4509. Divorce.

Comes now the plaintiff, Mary A. Waldron, in proper person and by William C. Wilson, her attorney, and said plaintiff now files the summons heretofore issued to said defendant in this behalf,
190 with the written waiver of the defendant thereon and his written consent to the immediate hearing of this cause; which summons, with the written waiver and consent thereon endorsed, reads as follows, to wit:

THE STATE OF INDIANA, } *sct:*
Tippecanoe County, }

The State of Indiana to the sheriff of Tippecanoe county, in said State, Greeting:

You are hereby commanded to summon Edward H. Waldron, if he may be found in your county, to personally be and appear before the judge of the superior court, on the 31st day of the present term, to be holden at the court-house, in the city of La Fayette, in said county, on the 20th day of June, 1887, to answer the complaint of Mary A. Waldron filed in said court against him; and have you then and there this writ.

Witness Henry C. Tinney, clerk of said court, and the seal thereof, affixed at office, in La Fayette, this 20th day of June, A. D. 1887.

[SEAL.] HENRY C. TINNEY, *Clerk.*

I, Edward H. Waldron, hereby waive the service on me of the within summons, and consent that said cause shall stand for immediate trial. I authorize A. Orth Behm to act as my attorney in said behalf and file an answer in said cause and to do all and every act or thing required of me in said behalf, and I fully enter my appearance to said cause.

E. H. WALDRON.

And comes now A. Orth Behm and produces to the court a power of attorney from said defendant to him, authorizing him, the said Behm, to appear in open court in the superior court of Tippecanoe county and enter his appearance herein and consent to an immediate trial of this cause; which power of attorney is in the words and figures following, to wit:

Power of Attorney.

Know all men by these presents that I, Edward H. Waldron, of La Fayette, of the county of Tippecanoe, in the State of Indiana, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, A. Orth Behm, of La Fayette, Indiana, my true and lawful attorney, irrevocable, for me and in my name, place, and stead to appear in open court in the superior court

of Tippecanoe county, State of Indiana, and in open court, in said court, enter my appearance to an action for divorce therein, wherein Mary A. Waldron is plaintiff and Edward H. Waldron is defendant, and consent to an immediate trial of said cause, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

191 In witness whereof I hereunto set my hand and seal this 13th day of June, eighteen hundred and eighty-seven.

E. H. WALDRON. [L. S.]

Witnesses:
ROBERT DAVIE.
W. A. FLETCHER.

STATE OF ILLINOIS, } ss:
Cook County, }

Be it known that on this 13th day of June, in the year eighteen hundred 87, before me, the undersigned, a notary public in and for said county and State, personally appeared Edward H. Waldron, to me well known to be the identical person who executed the foregoing letter of attorney, and acknowledged the same to be his act and deed, and that I have no interest, present or prospective, in the claim.

In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year last above written.

WM. A. FLETCHER, [L. S.]
[SEAL.] *Notary Public.*

STATE OF ILLINOIS, } ss:
Cook County, }

I, Henry Wulff, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Wm. A. Fletcher, Esq., whose name is subscribed to the proof or acknowledgement of the annexed instrument in writing, was at the time of taking such proof of acknowledgement a notary public in and for Cook county, duly commissioned, sworn, and acting as such and authorized to take the same; that I am well acquainted with his handwriting and verily believe that the signature to the said proof or acknowledgement is genuine, and, further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand — affixed the seal of said court, at the city of Chicago, in the said county, this 13th day of June, 1887.

[SEAL.] HENRY WULFF, *Clerk.*

And said Behm, now in open court, enters the appearance of said Edward H. Waldron in this cause and consents to an immediate trial thereof.

And said defendant now files his answer herein, which reads as follows, to wit:

192 THE STATE OF INDIANA, } ss:
Tippecanoe County, }

In the Superior Court of Tippecanoe County, to May Term, 1887.

MARY A. WALDRON }
vs.
EDWARD H. WALDRON. }

Divorce.

The said defendant enters his appearance to this cause in open court and consents to an immediate hearing thereof, and for answer to the complaint filed in this behalf says that he denies each and every allegation therein contained.

EDWARD H. WALDRON,
By A. ORTH BEHM,
His Att'y-in-fact.

And this cause now for trial is submitted to the court without the intervention of a jury, and the court, being sufficiently advised in the premises, finds that the plaintiff is entitled to a divorce from the defendant on account of his misconduct as charged in the complaint herein.

It is therefore ordered, adjudged, and decreed by the court that the bonds of matrimony now existing between the plaintiff, Mary A. Waldron, and the defendant, Edward H. Waldron, be, and the same hereby are, set aside and annulled, and the plaintiff is awarded the care and custody of her infant son, Willard W. Waldron, until the further order of the court herein.

It is further ordered, adjudged, and decreed by the court that said plaintiff do have and recover *off* and from said defendant the sum of ten thousand dollars ($10,000.00), collectible without relief from valuation or appraisement laws, as and for alimony in this behalf.

It is further ordered by the court that the plaintiff recover *off* and from the defendant the costs and charges herein.

THE STATE OF INDIANA, } ss:
Tippecanoe County, }

I, Henry C. Tinney, clerk of the superior court of Tippecanoe county, Indiana, do hereby certify the above and foregoing to be a full, true, and complete copy of all papers filed, proceedings had, and judgment rendered in the above-entitled cause in said court on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the

seal of said court, at office, in La Fayette, Ind., on this 14th day of June, A. D. 1888.

[Seal Superior Court of Tippecanoe County, Indiana.]

HENRY C. TINNEY, *Clerk.*
—— ——, *Deputy.*

193 Thereupon counsel for the plaintiff offered in evidence the statute of the State of Indiana upon the subject of divorce. To the introduction of which in evidence counsel for the defendant objected on the ground that it was incompetent, immaterial, and irrelevant.

The COURT: The court takes judicial notice of the statutes of Indiana. The jury will take the record as conclusive evidence of the divorce. I do not see what more you want.

Mr. ALDRICH: We want to show by the statute of Indiana upon what ground and for what reasons divorce can be had. The law of Indiana, for instance, says abandonment must be for two years. The evidence shows that Mr. Waldron had only been away a year. The statute says divorce can be granted for cruelty. This divorce was not granted for that.

Mr. WALKER, for the defendant: For the reasons stated we object to the introduction of the statute. The record is presented, and that is sufficient evidence that a decree of divorce was granted. Your honor has held you would not go behind that and inquire into the cause which led up to the decree; that it was not a proper subject of inquiry here. If it is not a proper subject of inquiry it would not be a proper subject of discussion before the jury.

The COURT: He may introduce the statute of Indiana to show what the law of divorce is.

And thereupon the court overruled the said objection; to which ruling of the court counsel for the defendant then and there duly excepted.

And thereupon counsel for the plaintiff read to the jury the statute of the State of Indiana, which was as follows:

Indiana Statutes as to Divorce.

194 #1031. Petition for divorce; residence; affidavit.—7. Divorce may be decreed by the superior and the circuit courts of this State on petition filed by any person who, at the time of the filing of such petition, is and shall have been a *bona fide* resident of the State for the last two years previous to the filing of the same and a *bona fide* resident of the county at the time of and for at least six months immediately preceding the filing of such petition, which *bona fide* residence shall be duly proven by such petitioner to the satisfaction of the court trying the same, by at least two witnesses who are resident freeholders and householders of the State; and the plaintiff shall, with his petition, file with the clerk of the court an affidavit, subscribed and sworn to by himself, in which he shall state the length of time he has been a resident of the State, and

stating particularly the place, town, city, or township in which he has resided for the last two years past, and stating his occupation, which shall be sworn to before the clerk of the court in which said complaint is filed. * * *

1032. Causes for divorce.—8. Divorces may be decreed, upon the application of the injured party, for the following causes, and no other:

First. Adultery, except as hereinafter provided.

Second. Impotency, existing at the time of the marriage.

Third. Abandonment for two years.

Fourth. Cruel and inhuman treatment of either party by the other.

Fifth. Habitual drunkenness of either party.

Sixth. The failure of the husband to make reasonable provisions for his family for a period of two years.

Seventh. The conviction, subsequent to the marriage, in any country, of either party of an infamous crime. * * *

195 # 1033. When not granted for adultery.—9. Divorces shall not be granted for adultery in any of the following cases:

First. When the offense has been committed with the connivance or consent of the party seeking the divorce.

Second. When the party seeking the divorce has voluntarily cohabited with the other with knowledge of the fact, or has failed to file his or her petition for two years after he or she had discovered the same.

Third. When the party seeking the divorce has also been guilty of adultery under such circumstances as would have entitled the opposite party, if innocent, to a decree. * * *

1034. Causes, how specified.—10. A petition for divorce shall specify the causes therefor with certainty to a common intent.

* * * * * * * *

1039. Answer; proofs required.—14. The defendant shall answer said petition under oath, if required to do so by the petitioner; but no decree shall be rendered on default without proof, nor shall any admissions made in said answer be used as evidence in any other case against said defendant; nor shall the denial under oath by the defendant of the facts alleged in the petition render necessary any other or further proof by the complainant than would have been necessary if such denial had not been under oath.

196 *Testimony of Mary A. Waldron, the Plaintiff.*

Recalled and examined by Mr. ALDRICH, on behalf of the plaintiff:

I was not a witness on the occasion of the procuring of that divorce.

Mr. ALDRICH: I offer to prove by the witness that there never was any act of violence on the part of Mr. Waldron towards this plaintiff.

Objected to by counsel for the defendant; which objection was sustained by the court.

Testimony of A. Orth Behm.

Called on behalf of the plaintiff and examined by Mr. ALDRICH:

I am the A. Orth Behm who has been referred to in the record of the divorce proceeding that has been read. I was representing Mr. Waldron in those divorce proceedings. I don't know by whom the expenses of those proceedings were paid except as I learned from Mr. Davie. I got money from Mr. Davie to pay them. I paid the plaintiff's attorney. This was in June, 1887.

Thereupon the plaintiff offered in evidence the deposition of JOHN C. BROCKENBROUGH.

To the introduction of which said deposition in evidence counsel for the defendant objected on the ground that it was incompetent, irrelevant, and immaterial to the issues in the case; which
197 objection was overruled by the court.

The said deposition so read in evidence was as follows:

My name is John C. Brockenbrough. I am the cashier of the Indiana National bank. My residence is at La Fayette, Indiana. Robert Davie kept an account with said bank in June, 1887.

On June 14th, 1887, he deposited with us a draft drawn by him on Edward H. Waldron for two thousand dollars. We credited the amount of the draft to his account the next day, June 15th, 1887. We collected the draft through the Merchants' National Bank of Chicago.

On June 20th, 1887, Mr. Davie received a credit to his account of $536.69. That also came from Mr. E. H. Waldron. I think it was a draft that he drew on Mr. Waldron at Chicago.

Cross-examination.

By Mr. M'COY, for the defendant:

I examined all the items in Mr. Davie's account with the bank of any moment after the date of this first item, and these two that I have mentioned are the only two items that I can find where Mr. Waldron's name was connected with it. I did not find another matter of about five hundred dollars or six hundred dollars some little time after that. I have no means of telling how that money was disbursed. The books were balanced and the checks given up. The only record we would have would be the amounts of the various checks and the dates when they were paid. We would not have the dates of the checks. I have no recollection on the subject of how that money was disbursed. The book has been bal-
198 anced and the checks returned to Mr. Davie.

Mr. ALDRICH: We now offer all the testimony of William C. Wilson, John M. Larue, and A. Orth Behm, the attorney for Mr. Wal-

dron, as to what the testimony was on the occasion of the granting of the divorce on the trial at La Fayette.

To the introduction of which testimony counsel for the defendant objected for the reasons that the testimony was incompetent, irrelevant, and immaterial, and that the depositions had already been suppressed by the order of the court; which objection was sustained by the court.

Which was all the evidence here offered on the part of the plaintiff on the trial of the cause.

199 *Defendant's Evidence.*

Thereupon the defendant, to maintain the issues on her part in said cause, introduced the following evidence:

Deposition of Nicholas Gribbling.

Called for the defendant and examined by Mr. A. ORTH BEHM:

My name is Nicholas Gribbling. I am 57 years of age and reside in La Fayette, Indiana. I am the proprietor of the St. Nicholas hotel. I have lived in La Fayette about 35 years; during the years 1884 and 1885 I was keeping the St. Nicholas hotel in La Fayette, the same place that I am now. I am acquainted with Mr. E. H. Waldron, and have known him a good many years.

Mr. E. H. Waldron registered for supper at my hotel on the 22nd day of October, 1884, and remained there till after breakfast on October 24th, 1884; that was at the time when he got hurt.

My books show that he came to board at my hotel again on the 8th day of February, 1885, and remained there till the 8th or 9th day of September, 1885, when he left; when he came there on the 8th of February he didn't make any statement to me at all about his family, or anything of that kind, or why he came there; outside of my books or the entries in them, I should have remembered that Mr. Waldron was boarding there, but could not remember exactly the time, but from my books I can tell the dates.

Cross-examination.

By Mr. KUMLER, for the plaintiff:

200 When Mr. Waldron went away on the 24th of October, 1884, I presume he went out to his home. I think so. Then he returned in February following and remained till the September following. I do not know where he went to after leaving my hotel in September, 1885. I think he was still a resident of this town; lived here a good while after that, but don't know where he did live, whether at home or not.

Cross-examination of ALBERT WILER:

Thereupon counsel for the defendant read in evidence the cross-examination of Albert Wiler, a witness called by the plaintiff and cross-examined by Mr. Charles B. M'Coy, for the defendant.

Said cross-examination was as follows:

During the 25 years I have known the plaintiff, Mary A. Waldron, I have never had occasion to be in her house, and she has never been in my residence. She has been in my store like any other customer, merely as a customer, in my dry-goods store. I never heard an unkind word against her reputation.

I knew her before her marriage to Mr. Waldron; she did business right above my store where I am keeping now. I did not know her first husband.

I heard occasionally of little troubles in their family before the time she got a divorce from Mr. Waldron. It must have been two or three years ago. I remember of Mr. Waldron boarding at the St. Nicholas hotel; I do not recollect when it was; I do not recollect of his having his leg broken.

I heard talked around that he had left his wife and was not
201 living with her. We had a girl that used to live with Mrs. Waldron and afterwards came to us and lived at my house. Her name was Annie Horan. She lives at Los Angeles, California, now. She is not married.

She came to our place to work immediately after leaving Mr. Waldron's. I guess it must have been two or three years ago.

I never heard about any peculiar circumstances in connection with the marriage of the plaintiff to Mr. Waldron, nor any in connection with her marriage to her first husband. I don't know where she and Mr. Waldron were married.

I didn't know them much before their marriage, and do not know where they were living at the time of the marriage, or that he boarded in her house before the marriage. I have not been a social acquaintance of Mrs. Waldron—only a mere store acquaintance—and as to her private family life I really know nothing except from hearsay.

I did not know of her divorce from her first husband. I guess it was before I came to La Fayette in 1862. I do not know how long her first husband lived with her.

I do not know how long Mr. Waldron boarded at the St. Nicholas hotel after he left the plaintiff, nor about his going back home and remaining there for a time. It had been a matter of common report that Mr. Waldron was in the habit of becoming intoxicated, and, as far as I knew, the reasons given for their difficulty were that they grew out of that fact. I never heard an unkind word of the plaintiff, Mrs. Waldron. I can't tell now whether it was for one or two years before that time these rumors had been in circulation about Mr. Waldron's habits, but rumor was that he drank considerably, and it must have been so for several years before he left La Fayette.

202 Cross-examination of Mrs. ADELE R. INGERSOLL:

Thereupon defendant's counsel read in evidence the cross-examination of Mrs. Adele R. Ingersoll, a witness called by the plaintiff and cross-examined by Mr. Charles B. M'Coy, for the defendant.

Said cross-examination is as follows:

My name is Mrs. Adele R. Ingersoll. I reside at 51 North Fourth street, La Fayette, and am the wife of Dr. J. M. Ingersoll, a physician, and have resided in the city of La Fayette six years last October. I did not know either Mrs. Waldron, the plaintiff, or Mr. Waldron before their marriage. I know nothing about her early life. I met Mr. Waldron and his wife together in their own house. I do not remember of Mr. Waldron having ever been in my house. He went in the same society that Mrs. Waldron did.

I heard of his leaving his home and going to board at the St. Nicholas hotel, and I saw him at his home while he was suffering from the accident of a broken limb. I heard he had been boarding at the St. Nicholas before that time. It was a matter of common rumor that he had left his home and family and that there were family difficulties. I never heard anything definite nor what the reason was. I never heard anything queer about Mrs. Waldron's early life.

203 Cross-examination of Mrs. O. C. GOLDSMITH:

Thereupon counsel for the defendant offered in evidence the cross-examination of Mrs. O. C. Goldsmith, a witness called in behalf of the plaintiff and cross-examined by Mr. Charles B. McCoy, for the defendant.

Said cross-examination is as follows:

My name is Mrs. Goldsmith; I am the wife of Oliver C. Goldsmith, and have resided in La Fayette 19 years; my husband has always been a contractor until now; he is a farmer at present. I have known the plaintiff, Mrs. Mary A. Waldron, ever since I have lived in La Fayette, and I have known her very well indeed for the last 15 years, and more intimately for the last 5 or 6 years.

I did not know her before her marriage to Mr. Waldron. I did not know her first husband, and don't know whether he is dead or alive.

I know of Mr. Waldron leaving his home and going to board at the St. Nicholas in the fall of 1884. I don't think it was for very long. I simply heard that he had gone there, and the next thing I had heard he had gone home. I heard he had broken his limb and was taken home in a carriage with his limb broken. I did not hear that he was unconscious when he was taken home. I think he went willingly. His wife told me that he did. I never heard his side of the story.

The plaintiff, Mrs. Waldron, was one of my intimate lady friends and moved in the same social circles that I did, and that was the best society of the town. She and her husband have both been in
204 my house a great many times, and I have been in their house. Mr. Waldron moved in the same social circles she did. They called at our house occasionally in the evening. They would drive in, put the horses in the barn, and Mr. Waldron and Mr. Goldsmith would go upstairs and play billiards, and sometimes Mrs. Waldron and I would sit down-stairs and converse, but

oftener up in the billiard-room to see the game played. I can't say that I knew of any disagreements in their family affairs before the time he went to the St. Nicholas hotel.

I don't know that I ever heard of anything against either of them during the first 15 years of their marriage life, but I think about 5 or 6 years ago I began to hear rumors as to unhappiness in their marriage relations, and I think it was a matter of common rumor here during the last 4 or 5 years that there were some difficulties in their family. Mrs. Waldron mentioned to me that Mr. Waldron was drinking when he was at the St. Nicholas hotel. We had occasion to know this before that time from the fact that one night he left her at our house, promising to come back there soon, and he didn't come back, and my husband went down and got a carriage and sent her home. I should think that was 4 or 5 years ago.

I think she told me about finding some letters in his pockets from some women of doubtful reputation, or rather of definitely bad reputation. I cannot tell whether this was before he had the accident and his limb was broken or not. I think she has told me of finding letters of that kind about his clothes on several occasions. I think for at least two years before she procured her divorce she had expressed herself to me as believing that her husband was unfaithful to her. I heard he was drinking badly.

Mrs. Waldron was quite intimate with me, but did not tell me all of her business. She never talked to me much against
205 him. She told me he was drinking and wanted my husband to talk with him about it. She never complained to me about anything as much as that. I think she mentioned something about these letters. I have a faint remembrance of hearing about her being driving his horse along the street and the horse of its own accord stopping in front of a disreputable house. Whether I heard it from her or somebody else I can't tell you. I heard something about it. I did not see her very much. She was a woman that was at home a great deal. I never heard of any trouble between her and Mr. Waldron about their child. Mr. Waldron and my husband have always been friends.

So far as I know, Mrs. Waldron has always been a very devoted and true wife and a good mother. She was a great home body and remained at home and took care of the household. So far as there were any rumors current in this community affecting her domestic relations, the cause of them was directed to Mr. Waldron's conduct. I have never heard them directed to her at all. In her talk with me it was with the effort on her part to have my husband exert his influence over Mr. Waldron as a friend with the hope of reclaiming him. From the conversations I have had with her concerning her domestic relations I have never had any cause to doubt her love and affection for Mr. Waldron.

206 Cross-examination of Mrs. SARAH E. ELDRED:

Thereupon counsel for the defendant read in evidence parts of the cross-examination of Sarah E. Eldred, a witness called on behalf of the plaintiff and cross-examined by Mr. Charles B. M'Coy.

The parts of said cross-examination so read in evidence were as follows:

I am a married woman. My maiden name before marriage was Sarah E. Feaster. I came to La Fayette in 1860. I am a dressmaker. I learned my trade after I came here, with Mrs. M'Kern. She is dead now. When I first became acquainted with Mrs. Waldron, the plaintiff, she lived on 5th street, in La Fayette. At that time her name was Beauchamp, and she was clerking in True's millinery store. She had no place or store of her own of any kind then. It was two or three years after I first knew her, probably, when she got a place of her own. I remember the time when she married Mr. Waldron. It was on the 17th day of September, 1865. They were married in Syracuse, New York. I know the date because I was married two weeks after that, and Mrs. Waldron told me the date of her marriage after she came back, and I have seen it in the newspapers.

I was not living in the same house with her before she went East to get married. I did not live in the same house with her at any time. I knew Mr. Waldron before he married her a couple of months. I met him at Mrs. Waldron's house. He was boarding there. I do not know how long he boarded there. I met him a little while after he went there to board, but do not know how long he had been boarding there before they were married. I
207 can't state exactly. I suppose it was six or seven months, as near as I can remember, but I am not sure. Her brother, Mr. Russell, also boarded there at that time. I think she had been carrying on her millinery business a couple of years before Mr. Waldron married her. Her place of business was on the south side of the square, up over Shaffner's store. I don't know how much stock she had there; a thousand dollars' worth it looked to me like. I have not been in the millinery business myself and don't know particularly what a millinery stock costs. Mrs. Waldron's mother lived in the house with her, and has lived in the house with them all the time after they were married, except that she went to stay with Virgil Russell, a brother, a part of the time. I can't tell the number of years, whether it was one or ten years, but outside of that she has lived in the house with Mr. and Mrs. Waldron all the time. She is an invalid, part of the time confined to her bed. I never heard of any difficulty in the way of quarrelling, or anything of that kind, between Mrs. Russell and Mr. Waldron; never heard of any unpleasantness between them, and never heard of Mr. Waldron complain of Mrs. Russell, and never heard her complain of him. She always spoke in the highest praise of Mr. Waldron to me.

I knew Mrs. Waldron pretty well before Mr. Waldron married her. I was her friend. I knew the people that were acquainted with her. I did not know her first husband. I did not know right at that time that she was a divorced woman—divorced from her first husband. I didn't hear it from her lips that she was, but I heard that she had been divorced, but could not state whether I heard of that fact before or since she married Mr. Waldron. I had

it in my mind that she was a divorced woman, but could not tell you the date when I first got that idea. It was before she
208 married Mr. Waldron. I never saw her first husband, and did not know of the circumstances of her first marriage. I heard a little of it. I never inquired into the matter. I didn't hear that he was married while under arrest for bastardy. I did not know how long it was after her first marriage till her child was born at that time. I heard the remark made that her first husband had to marry her, but I didn't hear the particulars. I did not know whether he ever lived with her or not, and never heard anything about that.

I don't know whether there was considerable talk about that at the time or not. I was not acquainted with her then. She had always borne an excellent character for morality, as far as I know. I never heard that it was a matter of considerable comment at that time as to the question of her marriage. I heard a few things, but I don't remember just what it was. I could not state them and could not state whether I heard that her first child was born within a month or two after her first marriage. I can't sa- it was a fact. I think I heard that. I didn't hear that it was a matter of record in the court-house here in La Fayette, and I don't know whether it is or not.

I didn't hear that she and Mr. Waldron were to be married until I heard that they were married. I had not heard before they started East that they were going East to get married. I saw Mrs. Beauchamp frequently before, but never talked to her about that. It was not any of my business. She never told me before she went East that she was engaged to be married to Mr. Waldron. I never heard of any engagement of marriage between them and had not heard of any talk between them before they went East that they were likely to be married. It was a surprise to me when I heard they were married. I don't know how many years she was
209 older than Mr. Waldron. I didn't know at that time and don't know yet how much difference there was. I supposed, from my knowledge and acquaintance with the parties, that she was older than he was, but I didn't know how much. I didn't know anything about their ages. I do not know whether Mr. Waldron was of age then or not. When they started East on that trip on which they were married she was going East to buy goods, and he was going East to see his parents, as I understood, and when they came back they were married. They went together on that trip. I do not recollect how long they were gone. The servant in their house at that time, before they went East to get married, was called Siss Carpenter. I don't know where she is now—whether she is married or not. I dropped her then, in 1865.

I don't know what route they took on their way East—whether they went by way of Detroit or not; at that time Mrs. Beauchamp owned a store, and she had her house nicely furnished, and that was all. I did not know anything of her finances. I was under the impression she owned the furniture in the house; she didn't own any houses and lots at that time that I knew of.

I remember once talking with Mrs. Waldron, the plaintiff, about stories or rumours of Mr. Waldron running after other women; she said she didn't think he was true to her; she spoke of a letter she had found in his pocket from a Miss Greenly. I don't remember now about the particulars; all she said to me was that he was going with women and that he was not true to her, and it was taking his love away from the family and his affection out of the family by going with those women; she did not mention any others beside this Miss Greenly. I never saw this Miss Greenly. I heard of them. I heard that they didn't bear a very good character; that is all that I know about them. I could not tell how many of them
210 there were or whether all their characters were bad or not. I believe the one I heard mentioned in connection with Mr. Waldron was called May or Mame, or something of that kind, and Mrs. Waldron told me about finding a letter in his pocket from this woman; she felt very bad over it; that was the first time she ever broached the subject to me of anything of that kind and the only time. I could not say when it was, but it was after Mr. Waldron broke his leg.

I heard he had left his home and went to the St. Nicholas to board, but I didn't know the particulars, and I don't know the particulars yet. I never heard his *a*ide of the story, and never talked with him about his family affairs in my life. I don't think I ever heard, prior to the time this suit w*s*a brought, one word that Mr. Waldron ever said about his domestic troubles to anybody, but I had heard Mrs. Waldron's side of the story once from her. I don't remember that I had heard it from others, and don't remember whether I had heard rumours of his running after o*h*er women before she told me at this time or not.

Deposition of Annie Horan.

Thereupon counsel for the defendant offered in evidence the deposition of ANNIE HORAN, a witness called on behalf of the defendant and examined by Mr. G. P. ADAMS.

The p*4*rts of said deposition so read were as follows:

My name is Annie Horan. I reside at Ninth and Main streets, in Los Angeles, California. I am a nurse. I am acquainted with the plaintiff, Mary A. Waldron, and have known her since
211 1874. I lived just next door to her from 1874 to 1876, when I went to live with her in La Fayette, Indiana.

I am acquainted with Edward H. Waldron, and have known him since 1876—to be acquainted with him; I knew him by sight before that; when I first knew them they resided on Sixth street, in La Fayette, living next door to where I worked. In 1876 I entered their employ as a house servant at St. Louis, Missouri; I did not go with them to St. Louis, but they sent for me and I went with them; they had gone there before I went; I entered their employ on the 10th day of July, 1876, remaining with them at that

time until the 3rd of March, 1877, when I left them, and again re-entered their services on the 17th of November, 1877, after they had returned to La Fayette. That time I remained in their service about a year, and left their employ, and afterwards went back to them the third time. I think altogether I was in their employ between six and seven years.

When I went to St. Louis I hired to them for four in the family, but her son, Ed. Beauchamp, was there the greater part of the time in the absence of Mr. Waldron. He is not Waldron's son, but is her son by her first husband. I hired to work for four in the family, his mother-in-law, himself, his wife and child, but this Beauchamp was there the greater part of the time that I was in St. Louis with them. The other time he was with them I cannot say just how long it was. He was forbidden the house by Mr. Waldron, but when they came back to La Fayette he would come to the house without Mr. Waldron's knowing it. He came to see his mother, of course.

He was a boy of bad habits, to begin with, and Mr. Waldron didn't like to have him around and forbid him the house, but he would come when Mr. Waldron didn't know it to see his mother.
212 This led to some unpleasantness and sometimes to trouble between Mr. and Mrs. Waldron. Mrs. Waldron wanted him to go and do for himself and leave the house, but when he came she would not shut the doors on him, and what Mr. Waldron didn't see he did not know, of course. Beauchamp took advantage of Mr. Waldron's absence and came when Mr. Waldron was not in. He was a worthless fellow and came to see his mother and get something, and he would get it.

He was a shiftless boy, and his traits of character were very poor ones. He was not, to say, vicious, but was kind of underhanded and sneaking like. He never did anything very bad, only to get all the money he could wring out of them, and sometimes he would steal things and pawn them, and that made a great deal of trouble between Mr. Waldron and his wife.

At one time while I lived with them this Beauchamp was imprisoned at Chester, Illinois, for stealing. I think it was at the time a letter was taken from the La Fayette, Muncie and Bloomington railroad. Mr. Waldron was superintendent and manager of that road. Beauchamp was sent to the Illinois prison at Chester for stealing, and it happened in Paxton, in the State of Illinois.

After he returned from prison he railroaded awhile, but he didn't stick to anything; he was very shiftless. Mr. Waldron got him work on the railroad and was good to him, provided he was good to himself. He was seemingly too lazy to work, and he didn't want to work, and he didn't hold the position Mr. Waldron got for him no time. Then afterwards he got into trouble again, and he was sent to the prison at Michigan City, Indiana, for a term of three years.

I know he was in that prison. I was sent there by his mother.
I didn't see him at Chester, but I saw his mail from Chester
213 to his mother. After he came out of prison at Michigan

City I never knew anything more of him. When his time expired I was not living at Mr. Waldron's. It has not been very long since he was released from the Indiana prison.

He caused trouble between Mr. Waldron and Mrs. Waldron very often, I had been told by her, and she told me that Mr. Waldron had said that either he or Beauchamp should leave the house—either Mr. Waldron or Beauchamp should leave the house; but Beauchamp would take advantage of Mr. Waldron's absence, and come in when he did not know it. He was not living an honest life; he was too lazy to work and would not work; the only thing he could do was railroading, braking, and he would do very little of that. When they were living in Missouri he never failed to show up, but he very seldom ate with Mr. Waldron; it was only when Mr. Waldron happened to come. While Beauchamp was in prison was about the only time he stayed away.

During the whole time I lived with them the mother-in-law remained in the family. I don't think she was more than six months absent, if that much. Her presence had a great deal of affect upon their domestic happiness. I don't think, for the last year I was in the house, the mother-in-law and Mr. Waldron ate at the table alone, or that they ever ate meals at the table together. The fact of it is, they two—Mrs. Russell, the mother-in-law, and Beauchamp—they were hangers-on.

Mrs. Russell remained in the house at her own instance, seemingly. Mrs. Waldron would gladly let her go and live with her brother, but she wouldn't go; she preferred living with Mrs. Waldron, as they were the best off. Sometimes her presence led to disturbances between Mr. and Mrs. Waldron, but very rarely; she kept herself away. She was an invalid, poor old thing! and used to stay in her room, and didn't bother him very much. I
214 could not state that I know of any outbreaks between Mr. and Mrs Waldron because of the presence of Mrs. Russell, only that I saw the feeling there all the time.

Q. "You state that when you went there there were only four?

A. Yes.

Q. Were there five afterwards?

A. Five; Beauchamp on the dead, you know, always; always working his way in on the dead, you know. This was kept quiet from Mr. Waldron."

Mr. and Mrs. Waldron had one child, a son, Willard W. Waldron. He was a pretty good boy, and then sometimes he was not.

I saw a great deal of Mrs. Waldron. In the domestic work she was with me a great deal about the house, and she talked freely of her domestic troubles and her family troubles to me. As far as I know she very rarely shielded anything from me and I saw it acted out, and I had a good opportunity to learn her character.

She deceived Mr. Waldron in shielding that boy when he was coming there and had his lodging and board, and he was provided with money and all that after her husband had objected to his coming to the house. In that line she was deceitful and she con-

cealed other domestic matters from Mr. Waldron which he should have known.

I only saw Mr. E. S. Alexander once. I was not acquainted with him, only as a servant. He was there, entertained by Mr. Waldron. He resided in Chicago at that time. As far as I know his relations and Mr. Waldron's were very friendly. I did not know Mrs. Alexander. I think the plaintiff, Mrs. Waldron, and her son, Winnie, visited Mrs. Alexander once when she went to Chicago.

215 During the time I knew Mr. Waldron he was in the railroad business and was at home, only when he was called away on business and when he went away on pleasure trips. He was at home quite a good deal. The time spent at home by him with his wife and family during the early years I lived in the family did not compare at all with the time he spent at home with his wife and family during the latter years. When I first lived with them, when they lived in St. Louis, they seemed to be happier, and she didn't seem to be as jealous as the last time that I lived with them, although there was jealousy shown all the time. The first time he was more social and more friendly and more cheerful than the last.

The last three years that I spent in his family I can freely say that Mr. Waldron acted all the time as though he wanted to get away. That was during the three years commencing about 1881 or 1882.

During my seven years' residence in the family my opportunities for learning the nature of their domestic life as regards its happiness were very good, from what I saw and from what Mrs. Waldron had told me with her own mouth. I saw a great deal of their home life, and as regards happiness and affection it was very dry and glum. I don't think whilst I lived with them that his affection compared in any way to or like other gentlemen to their wives that I have lived with previously and since. The state of Mr. Waldron's affection for the plaintiff was not overly good and apparently it decreased.

It was an unhappy family the greater part of the time. When it was not the mother-in-law to raise a little disturbance it would be the step-son, Beauchamp. When it was not Beauchamp it seemed to be jealousy of other women. There always seemed to be

216 something to mar their pleasure, as near as I could observe and from her own speeches to me. She talked freely to me about it, and my living there enabled me to see and know perfectly well how they were situated. She said so much to me and so many times that I really cannot tell what she said.

The drift of her conversations was as to Mr. Waldron's neglect and coldness. When he would come home, after having been gone, you would suppose that he would have much delight with his wife and child Winnie, as other gentlemen do, and, instead of that, I can say it was coldness. Of course, when he came in he kissed and shook hands with them like all fathers and husbands would do, but after that was over there didn't seem to be any joyfulness at all; everything seemed to be cold and they didn't seem to be happy.

Then she would remark to me how cold and glum he had acted and more than one time expressed that they had the name of Waldron, but nothing more; that as a husband and father there was nothing more. She complained to me of his coldness and neglect. Never at any time did he go with her or drive with her. She had her own horse and phaeton and he had his rig to go. The last three years I was in their family he did not have time; always some other business to call him away from her.

She was very jealous of him and complained to me of his flirting with other women. The conversations were like this: Taking her out for a ball or to an entertainment or to a party, whilst there he devoted his entire attention to other ladies and leave her as a wall-flower; sometimes in particular to other ladies, and when not in particular to one lady generally to others, but rarely to her. She complained to me of being taken out and of being ashamed and feeling very bad from his neglect; not treating her as she
217 supposed she ought to be treated at these parties and these places. From my observation in the family I think the greater part of their unhappiness came from their domestic troubles.

Cross-examination by JOHN HAINES, Esq., for plaintiff:

I first commenced to work for them July 10, 1876, in St. Louis, Missouri. On the 3rd of March, 1877, I came from St. Louis to La Fayette with Mrs. Waldron. They boarded from then and were building their house, and I was not in service with them until the 17th of November, 1877, when I went to live with her again. I lived with them three times, and it was between six and seven years I spent in their family. It was more than that long from the time I first went to them to the last time I left them. But twice during the period I was away from them for a time, so that I actually worked there only about seven years, and the last time I lived in their family I was there the longest time. Mrs. Waldron and I at times did not get along very well together, and I went away and came back again. I finally left there about some time in 1884 or 1885. At that time they were living in La Fayette, on 23rd and Union streets. After leaving Mrs. Waldron I went first to Mrs. Reynolds and after to Mrs. Albert Wiler, in La Fayette. I came to California on the 9th of October a year ago. The first I heard of this lawsuit was last fall. I saw an account of it in the San Francisco Chronicle and I saw it in the La Fayette papers.

I have had written communications in regard to this case from the plaintiff, Mrs. Mary A. Waldron. I don't know the defendant, Mrs. Josephine P. Waldron. Whilst living with the plaintiff I heard her spoken of and knew who she was. She was living in Chicago, but Mrs. Alexander did not visit the plaintiff while I was living with her.

218 While I was living there the plaintiff only spoke of Mrs. Alexander in friendly terms. She was jealous of her husband, but she never mentioned Mrs. Alexander among the persons of whom she was jealous. Mr. Alexander was living at that time,

and from her conversation she and Mrs. Alexander were on very friendly terms.

I knew of Mr. Waldron having his leg broken, but I was not living with them at that time, but from what I have heard the plaintiff say she was all care and devotion to him, and I can freely say she always was that. I could not say it was all devotion on the other hand. She complained to me about his coldness and indifference to her, and I observed it myself. It increased so long as I was with them and had an opportunity to observe them.

She complained to me at different times, not only of that, but of his attentions to other ladies, not only whilst I was living with her, but after I had gone to live with others. I had other conversations with her after I left there. She did not manifest any unkindness nor want of affection to him, only through his coldness and indifference, and it showed plainly she suffered in her feelings from his want of attention to her. She seemed to love him very dearly.

At one time after I had left her, when I went to see her, she said to me that, no matter what he had done and how cold he had treated her, if he would come back to-day, she would forgive him. I said to her I would let him go. She said no; if he would come back to-day she would take him back; but he didn't want to come. He would have gone long before he did if there was a good chance to go. He was ready at any time and all the time to be offended.

219 She only spoke to me once of Mr. Waldron and Mrs. Alexander, and then she said that she thought he cared for Mrs. Alexander. That was after I had left her.

When I lived in St. Louis with them Mr. Waldron was general manager of the Ohio & Mississippi railroad and had an office at St. Louis. When I lived with them in La Fayette he was general manager of the Lake Erie & Western railroad. During the time he lived in La Fayette he was away from home a great deal. I observed a great many times his attentions to other ladies that caused jealousy on the part of Mrs. Waldron; it was principally driving. He had fine horses and fine buggies, and she complained that he had no time to drive with her. He very rarely drove with her. He drove more frequently with other ladies than he did with his wife, and with some of them the circumstances were such as would naturally attract attention. Mrs. Waldron was aware of it; he drove with other ladies frequently. Some of them were ladies with whom Mrs. Waldron was on friendly terms and some were not.

She complained of his flirting with other women. He had a private car, and she used to tell of his taking other ladies on trips to Chicago, to Sandusky, and to Bloomington; so there were different ways of flirting and making trouble.

I left La Fayette on the 3rd day of October, and I think I last saw the plaintiff about April, 1887, and at that time she told me that if he would come back she would forgive him all. She told me how she loved him notwithstanding that he did not care for her. He was living away from her at that time. I think he must have been away a year before that. There is no use talking, Mr.

Waldron was a great flirt, and his living there was—O my—just awful. A blind man could see it.

220 During this year he was away from her. Before I last saw her in April, 1887, I think he was living in Chicago a part of the time, and part of the time he boarded in a hotel in La Fayette.

It was only while I lived with them in La Fayette that Mrs. Waldron complained of his lack of attention to her and loss of affection for her; that was commencing the 17th of November, 1877, and from that time on she complained of his loss of affection for her, but not so much as the last time I was with her. She made no complaint about it while I lived with them in St. Louis—the first time I lived with them.

221 Mr. M'Coy, for the defendant: Counsel for the plaintiff took the deposition of Robert Davie, which they did not read and as to which the motion to suppress the deposition was not urged. Parts of that deposition come within the rule of exclusion which your honor has laid down—that is, the parts as to the testimony that was given in the divorce case at La Fayette. Other parts of that deposition do not come within that rule, and so much of it as is without the rule we wish to read, although it was taken as their deposition. We wish to read it on the question of the agency of the witness.

Mr. Aldrich: We want it to be understood as urged that if any part of the deposition is read the whole of it becomes competent. The testimony is not admissible for the purpose of proving he was the agent or was not the agent.

The Court: You may read to the jury what there is on that subject.

Deposition of Ro *Robert Davie.*

Thereupon counsel for the defendant read in evidence questions and answers 1 to 12, 37 to 50, 51 to 85, 88 to 113, and 127 to — of the deposition of Robert Davie, a witness whose deposition was taken on behalf of the plaintiff and examined in chief by Mr. Aldrich, for the plaintiff; also the testimony of the witness, Robert Davie, recalled by the plaintiff.

The parts of said deposition so read in evidence were as follows:

222 Questions and answers 1 to 12, inclusive: My name is Robert Davie; I reside at La Fayette, Indiana, and have resided here five years, I think.

I have been acquainted with Mrs. Waldron, the plaintiff in this action, about three years, I think. I am forty years of age. I was business agent for Edward H. Waldron for about two years and a half, I think, commencing somewhere in the summer of 1886. My duties as such agent were mostly in selling some personal property and closing some real estate in La Fayette. At the time Mr. Waldron left the city of La Fayette to reside in Chicago I was not well acquainted with him, and I don't know the month he left. I have

no means of knowing the cause. At that time I don't think I was even personally acquainted with him; I don't think I had met him.

Questions and answers 37 to 50 were as follows: I believe I made more than one trip to Chicago; possibly two trips. My object in going to Chicago was not to negotiate the divorce proceedings. It had some relation to the divorce suit. The bearing it had on it was to receive the money which was to pay the expenses of the divorce suit. It was necessary to pay certain bills before the thing could be finally settled, and it was to see the money was properly provided for. The money was not to be paid to Mrs. Waldron, but was to pay bills owing by Mr. and Mrs. Waldron in La Fayette. The fact that they owed accounts here had no effect on the divorce proceedings, only in the settlement of it. They were old accounts mentioned in Mrs. Waldron's proposition to E. H. Waldron, which were to be paid. I can furnish a copy of that proposition. I will do so before this examination is concluded. I never met Mrs. Alexander, now the present Mrs. Waldron. I saw her once accidentally. It was on the occasion of a visit to Chicago, but not a visit in con-
223 nection with the divorce proceeding. I happened to see her on the street one day and she was pointed out to me.

The substance of questions and answers 51 to 85 are as follows: I decline to state the amounts of money paid me by Mr. Waldron in connection with the divorce matter because of the confidential relations between Mr. Waldron and myself. The amounts were paid by himself, and it was paid to me by drafts through the Indiana National Bank of La Fayette, Indiana. I cannot state distinctly whether it was two days before or two days after the decree of divorce. It was connected with the proceedings for divorce. The drafts were drawn in my favor. The money was put to my credit in the bank, and the money came from Mr. E. H. Waldron direct to me, but I don't know whether the draft was procured here or in Chicago and sent here. The drafts came direct from Mr. E. H. Waldron to Robert Davie. I decline to produce my bank books for inspection. They are my private property, and I kept no special account with E. H. Waldron. My accounts were all together.

After Mr. Waldron accepted the offer made by Mrs. Waldron—I think it was after that—I went up there to be certain the money would be here, and the only conversation I had with Mr. Waldron was to impress upon his mind that the money must be here or the contract would not be carried out. I paid out that money in various amounts around town here. I decline to state to whom I paid it or what amounts. These were, in a measure, confidential matters between Mr. Waldron and myself. Mr. Waldron has been accounted to for all the money paid out and has the vouchers. Mrs. Waldron's proposition was simply that all matters should be paid, both owing by him and her, and they were paid, and I received that money to pay them, and I paid them and Mr. Waldron has been accounted to for all the money that went through my hands.
224 Nobody has ever requested me to refuse to disclose this matter to anybody. I have not seen Mr. Waldron for ten months.

A person told me this morning that his son said he was in town now. I did not pay the costs of the divorce proceeding, so I don't know who paid them. I paid the counsel's fees on Mr. Waldron's side. Who paid the others I don't know.

At the time I was at Chicago I met Mr. Waldron at the Grand Pacific hotel. I may have been in his office with him, but that is all. I went one afternoon to Mrs. Alexander's house, on Michigan avenue, to inquire for him, but he was not there they told me. That is the only time I was ever there. I saw a servant girl and was told by her that Mr. Waldron was not there, and started away and was called back and told by the girl she was mistaken, that Mr. Waldron was there that evening, but he would see me next day at the hotel. I saw no one else there that night besides the servant girl. I do not recollect of any reasons being given why Mr. Waldron did not see me. This was prior to the divorce proceeding.

I decline to state how much money was paid me altogether in connection with this divorce proceeding. I do not base my refusal upon any request of Mr. Waldron or of anybody, and refuse for no other reason except that I deemed my relations with Mr. Waldron to have been confidential.

Mr. M'Coy, for the defendant, requested the witness to answer the questions.

(Witness resumes:) Mr. Waldron paid me no money at all in Chicago in connection with these divorce proceedings, but he paid me through the bank, in the ways I have stated, about twenty-five hundred dollars in all.

225 All that money was paid out by me in connection with Mrs. Waldron's proposition to Mr. Waldron.

Q. You have spoken about Mrs. Waldron's proposition to Mr. Waldron. Is it not a fact that the first proposition came from Mr. Waldron?

A. No such proposition was made through me. If any proposition was made by him it was made to her. I don't know anything about it.

Q. State whether Mrs. Waldron here ever employed you in any way as her agent to make any proposition to Mr. Waldron in connection with the divorce proceeding.

A. I had a proposition from her, signed by her. I have forgotten exactly how the thing came up. Mrs. Waldron didn't send for me to make any proposition to Mr. Waldron. Mrs. Waldron never employed me as a paid agent. I don't know whether it was her agent or what it was. I simply received that paper signed by her. It was at her house, but I have forgotten exactly how I came to go there or the circumstances under which I received it. Mrs. Waldron never sent for me to come there to make any proposition to Mr. Waldron. I have been there at Mrs. Waldron's request; at least I saw Mrs. Waldron at his request. I don't know that I was requested to go to her house, but I was requested to see her. These meetings were prior to the divorce proceeding.

Q. State whether you ever visited Mrs. Waldron in connection

with these divorce proceedings or in relation thereto, except in pursuance of your employment by Mr. Waldron to bring about the divorce proceeding.

A. Yes, sir; I have.

Q. In what connection and under what circumstances?

A. Well, I felt I was as much her friend as I was his friend, and I wanted to befriend her as much as I could. That was all
226 that led me to do it.

Q. At the same time you had these generous feelings you were his paid agent, were you not?

A. Yes; but I was not paid to attend to any divorce matters, or employed.

Q. State what your connections were with those divorce proceedings.

A. Mr. Waldron never paid me a cent for any services.

Q. What was the amount he paid you for the other proceedings?

A. Mr. Waldron has paid me several sums for looking after his real estate and other matters which are entirely irrelevant to this proceeding, and which are entirely confidential between himself and myself as agent or employer—commission for selling property. I could not state the sums now, anyway.

Q. State whether you were ever employed by Mr. Waldron—except at the time you have testified about—for anything.

A. I was not employed by Mr. Waldron at any time prior to those two years and a half when he first employed me to look after the real estate. I think that was the time he first employed me. I was not employed as his agent in the divorce proceedings, except that I acted as his agent here and settled those matters. I paid the attorney's fees in connection with the divorce.

Q. State if you went to Chicago as a volunteer or with the view of assisting Mr. Waldron.

A. I went with the view of assisting both of them.

Q. But, so far as you were assisting Mrs. Waldren, it was done without her request and without compensation?

A. Mrs. Waldron never compensated me and Mr. Waldron never did for attending to any divorce proceeding.

The witness here produces the original writing or proposition of the plaintiff to Mr. Waldron in relation to the divorce proceeding, said paper having been marked "Plaintiff's Exhibit
227 A" and offered in evidence by the plaintiff as a part of the deposition of the witness.

And it is now read in evidence by the defendant.

Said paper is as follows:

Proposition of Mary A. Waldron to Edward H. Waldron About Alimony.

If Edward H. Waldron will give me in full payment of alimony a deed for the homestead property in which I now live and will pay all taxes now due thereon, including the taxes for the year 1886, and will also execute and deliver to me a bill of sale for all the

household furniture now in said house except the family Bible, formerly owned by Mr. Waldron's father, and will also give me a deed for the 40 and 4½ acre tracts of land, so as to entitle me to the proceeds over and above the mortgages and taxes due thereon, and will also execute to me his personal note for $10,000.00, due in five years from date, with 6 % interest per annum from date, payable semi-annually, and will pay all gas, water, feed, and other bills owing by him or me in the city of La Fayette, I will at once apply for and procure a divorce from him, he to pay all costs of said proceeding and to pay my attorney's fees for procuring said divorce, and said conveyances and bill of sale to be delivered upon the granting of the decree of divorce.

Said Waldron shall also assign to me the policy of insurance held by him in the Penn Mutual Life Ins. Co.; also pay all taxes due on my property for years 1886 and prior years, situate on 5th & Wall streets, La Fayette, Ind.

La Fayette, Ind., June 11, 1887.

MARY A. WALDRON.

(Endorsed:) Mrs. Waldron: If you approve this I can say that it is legally right. W. C. Wilson.

228 Counsel for the defendant also read in evidence the deposition of said witness, ROBERT DAVIE, recalled, as it had been taken by the plaintiff, which was as follows:

In my former examination I testified that the total amount of money received by me from Mr. Waldron in connection with these divorce proceedings was $2,500. I wish to correct my testimony in that respect. I received sums afterward that I had forgotten. The total amount received was $2,904.74. As near as I can give the dates of the various receipts, there was $2,000 received by me on the 15th day of June, 1887; $536 on the 22nd day of June, 1887, and the balance was received in installments during that fall. They were paid in small installments during 1887. All those connected with the divorce case was in 1887.

Cross-examination.

By Mr. M'Coy:

I did not receive any portion of that money from Mr. Waldron's present wife. It all came direct from him by drafts through the bank in his own name and by personal checks on the bank in his own name.

Q. In your direct examination you were asked some questions relative to your testimony in the divorce case of the present plaintiff against Mr. Waldron. I will ask you if Mr. E. H. Waldron was present at the time your testimony was given at this divorce suit.

A. No, sir; he was not.

Q. And the information to which you testified there you didn't get from him, I believe?

A. None of it.

Q. And he didn't know what you were going to testify to,
229 and he didn't know you would testify at all?

A. I didn't know I would be a witness in that case until an hour or two before on the same day.

Q. And he didn't know you were to be a witness, as far as you know?

A. I believe not; not to my knowledge.

Q. To your knowledge, did he have any knowledge as to what were the contents of the bill for divorce—the petition with the charges against Mrs. Alexander?

A. No, sir; he didn't; they were drawn up just a few hours before the case came to trial; that is my recollection of it.

Q. You never took that to him and showed it to him in Chicago?

A. No, sir.

Q. Or gave him any information as to its contents?

A. No, sir; I didn't know myself what the contents were.

Q. So far as Mr. Waldron's information on the subject went, to your knowledge, it was that she was to procure the divorce on the grounds of cruelty and desertion?

A. Yes; that was all. Mr. Waldron had no knowledge of this "judgment over," as it is called, which is said to have been a lien on Mrs. Waldron's homestead after the time of this settlement. I didn't know it myself. I never heard of such a thing and never acquainted him with that fact. As far as my knowledge goes, he had no knowledge of it. He could not have very well. As far as my information goes, he thought that all the debts and obligations which he had agreed to pay had been paid. They were carried out to the letter, as far as I understood them. He knew nothing about it. He supposed they were all settled; that was the information I gave him on that subject.

230 Redirect examination.

By Mr. ALDRICH:

I don't know as Mr. Waldron said anything to me specially concerning the procuring of the divorce on the ground of cruelty and desertion on his part. I believe he said once that if the suit was brought it might be brought in that way. I did not agree to furnish the evidence for him on that subject. I didn't know anything about it. I don't know that I was ever a witness in my life in any case before that time or since then, and am not a procurer of testimony. To my knowledge, Mr. Waldron did not say what acts of cruelty he had been guilty of that entitled Mrs. Waldron to a divorce. He didn't say why she was entitled to a divorce on that ground. He hadn't instructed me about it at all. I believe he casually mentioned that there were grounds for a divorce, but he didn't give me any grounds about it, except the grounds of cruelty and desertion. That is what he said—that she could bring about a divorce for those reasons. He never employed me as an agent for a divorce or for procuring a divorce.

Q. Did you, of your own knowledge, know of any acts of cruelty

or desertion that entitled Mrs. Waldron to a divorce from Mr. E. H. Waldron?

A. I know if I had treated my wife as he has treated his wife, by leaving her, she could get a divorce. I didn't know anything about the statutes. I don't know the time Mr. Waldron left. I was not intimate with him at all. My testimony was given at that time to the best of my knowledge and belief, and exactly what I testified to I could not state now. I hadn't been intimate with Mr.
231 Waldron prior to the time he left her. I was employed by him to sell some real estate for him; that was my first acquaintance, and my introduction was first by a personal interview with his brother. I think I became intimate with Mr. Waldron about a year before the divorce, and that continued up until the time of the divorce. I did not meet him in La Fayette du-inng that year. I only met him in Chicago, and it was three or four times altogether—I could not state accurately now; and I was only intimate with him as far as my business relations made me intimate with him.

Q. You knew of his great desire to have a divorce procured, didn't you?

A. Well, he may have expressed to me that he was unhappy in his family relations. He thought it was best for both.

Q. You knew that was one of his interests in the city of La Fayette, that he wanted a divorce and a legal separation from his wife? You knew that to be the fact?

A. He never impressed upon me any great anxiety for it. He did talk to me once or twice about his domestic troubles.

When I was first employed I paid bills here for him, and at another time he directed me to pay no more bills, and explained to me then his family relations and why he didn't wish the bills paid. The first instruction came by mail, in which he gave me no information about why he did not wish them paid. Afterwards I had a conversatio- with him, and he furnished the reasons why he did not want them paid. He has often expressed himself to me about being very reticent about his affa-rs. He has talked with me about his family relations and also abour his affairs. The principal reaso*b* he gave me at that time why he did not want his family expenses here paid any longer, as far as I remember, was
232 simply this, that he preferred that all bills should be paid in La Fayette by cash by the persons who purchased the goods; that he preferred no more checks sent from Chicago, and he told me that he would not pay any more bills here at all. He did not say that he would not contribute any longer to the expenses of his family, but he said he would not pay any more bills for goods except to the house from month to month; that he would not pay them. He never stated specially to me that he desired to have a divorce procured, or that he was specially anxious for a divorce. No one contracted with me to go to Mrs. Waldron to talk to her about having a divorce. I went there voluntarily and I told her so at the time, and I told her the truth.

The paper I referred to for the purpose of refreshing my recol-

lection upon the subject of the time when payments were made to me by Mr. Waldron is simply a rough memorandum of the receipts from Mr. Waldron at that time, and they are mentioned in two sums. (Witness produces the paper for inspection of the counsel for the plaintiff.) In this account I have charged Mr. Waldron with the payment to Mr. Behn of $1,500; that was the amount I understood Mr. Behn was to receive; it was to cover the expenses as they accrued; some time prior to the divorce he was employed as attorney by Mr. Waldron; it covered his fees and whatever expenses he might have; it was about ten days before the divorce that he was employed, if I remember right; aside from the services in the divorce proceedings, Mr. Behn was consulted with reference to certain matters as to the sale of the personal property, and he was consulted with reference to sales of stock in the Deeds Metallic Packing Co. of Indianapolis; there was none of this $1,500 paid to Mr. Behn taken for the purpose of paying Mr. Waldron's
233 debts other than the legal expenses. I don't know what expenses it was expected Mr. Behn would be at in connecti-n with the procuring of this divorce, and I don't know what expenses were anticipated in settling upon the sum he was to receive; he simply mentioned the sum that was required. I received nothing at all from Mr. Waldron in regard to the divorce case except my expenses to Chicago and my hotel bills; my accounts show all the items; as far as I remember now, I received $285.00 from Mr. Waldron for my services in every capacity during that year.

I forget whether or not the $1,500.00 was all paid to Mr. Behn out of the first $2,000 that came here. It all came within ten days, and I have forgotten whether that was all paid at once. I think it was all paid out of the first amount. I paid all the sums mentioned in that account in full. I took a receipt for everything. The receipts are in full for everything.

Recross-examination.

By Mr. McCoy:

I never received anything from Mr. Waldron for any services in connection with the divorce matter. He paid my traveling expenses and hotel bills; that was all. I went to Chicago and took up to him the deeds and power of attorney to Mr. Behn, which he executed there, and he paid my expenses there. He paid $22 and $25. I was there twice.

Redirect examination.

By Mr. Aldrich:

I never saw Mr. Waldron at the Alexander house. I went there once to see him, as I have testified, and was informed he was
234 in the house, and I was informed at the hotel that he was there with other guests at a progressive euchre party or something of that character. I was not informed that he could not be seen because he was under the influence of liquor, and I did not tell

Mrs. Waldron that. I paid Mr. Behn $1,500, but have no knowledge how he disbursed the money or what was done with it.

235 *Testimony of Thomas N. Vallins.*

Called on behalf of the defendant and examined by Mr. WALKER:

My name is Thomas N. Vallins. I reside at 1079 West Monroe street, Chicago. At present I am a travelling salesman for the La Esperanza Cigar Company. I have been connected with that company since the first of the present year. In the summer of 1888 I was employed as an operative of the Pinkerton National Detective Agency. I am acquainted with Henry Kirtland. I have not seen him here in court and was not in the court-room when he testified. I first became acquainted with him about June, 1887. He was then living at 83 23rd street, Chicago. My acquaintance with him continued a matter of several weeks, probably from the 18th of June until the 27th of July. During that time I was boarding at his house and in his family. There were several other boarders there. There was one man called Groman, one named Williamson, and I remember one named Archie Evans. Those three were there more or less all the time I was boarding there. There was also a woman boarded upstairs, rooming there for a short time. I know Marius Casperson by sight. I have seen him in company with Kirtland and in the immediate vicinity of Kirtland's house.

236 In June, 1888, I saw him at Kirtland's house on two occasions. I think the first time was on Thursday night, about the 21st of June, 1888, about eleven o'clock at night. He left there about a quarter of twelve, which would bring it early in the morning. I next saw him at the same place on the following Monday night.

I remember a conversation with Henry Kirtland, at his residence on 23rd street, on Saturday evening, June 23rd, 1888. We had been at Bergman's saloon, and the conversation was on his front steps. He said to me that he had to go to a lawyer's office at twelve o'clock the next day, Sunday, and asked me to accompany him. On the following day, Sunday, June 24th, 1888, about eleven o'clock in the forenoon, I left Kirtland's house, in company with him and Archie Evans, and we went across to Bergman's saloon, on the corner of 22nd street and Cottage Grove avenue. From there we took the Cottage Grove avenue grip car down town to Jackson street, where we got off and went west on Jackson street. On the way down Kirtland said to me, "I am going on a fool's errand;" and in reply I asked him what it was; and he said, "I have been going to tell you about it several times, but I never got the chance. He said that he had worked three or four years on Michigan avenue for a family named Alexander, and Mr. Alexander was dead, and the widow had married a man who was recently divorced from his wife, and that now the divorced wife was bringing a suit against the present wife for alienating the affections of her husband. After leaving the car, while walking west on Jackson street, Kirtland said to

me that he wanted to be a little late, as he did not want the lawyer to think he was anxious to come, and he was not going to appear in the case unless there was money in it. At the same time, and while walking west on Jackson street, he showed me a letter bearing upon the corner the printed business address of C. H. Aldrich, at-
237 torney, 225 Dearborn street. We were near Adams street at the time, on Dearborn, when he took the letter out, and I remember the "C. Aldrich." I do not remember about the other initial. I went with Henry Kirtland to the building, 225 Dearborn St. We looked at the directory of the rooms in the building and found Mr. Aldrich's rooms to be 601 and 605. After the number was found Henry Kirtland left me to go to the room. He returned to me after about an hour and told me he had been talking with Mr. Aldrich all that time. Then we went to a saloon on Clark St., known as Colonel Wilson's saloon. On our return home that day in the car Henry Kirtland said to me that long before this suit was brought there had been some sort of a suit for insurance on Mr. Alexander's life, and Mr. Alexander's brother, Charles, had interviewed him; that Charles Alexander was the man who was urging on Mrs. Waldron number one in her suit; that after Charles Alexander had interviewed him in regard to the insurance Charles Alexander had gone down to La Fayette, Indiana, where this woman lived, and talked to her and had her bring this suit.

Henry Kirtland further said to me during our return home on that Sunday that he would not tell Mr. Aldrich anything that would do them any good unless he got paid for it, even although they should subpœna him. He said, "They are suing for one hundred thousand dollars, and if they get twenty-five thousand dollars they will tell me to go to the devil, and that is all the good it will do me." He further said to me that a man named Casperson was the coachman, and that Mr. Aldrich wanted him as a witness, but that Casperson was a level-headed fellow and did not care to be mixed up with the case unless he was, and that Casperson had told Mr. Aldrich's clerk, who had been out to see him, that he would
238 do just as he, Kirtland, would do in the matter; consequently Aldrich had to work through him. Kirtland also said to me that Aldrich wanted Casperson to come to his office that day and Casperson would not do it, saying he would leave it to him as to whether they would have anything to do with it or not, and Kirtland further said that he and Casperson could say a great deal if they were paid for it and not unless they were.

On Monday evening, June 25th, after Casperson called at Kirtland's house and after he had left, Kirtland said to me, in his house, that he was negotiating with parties in the case with a view to obtaining some money for their services, but he did not think that Aldrich, the lawyer for the prosecution, would want to do what was right, and if not, they did not want to be mixed up in the case at all.

I remember being with Kirtland and Evans at Bergman's saloon, on the corner of 22nd street and Cottage Grove avenue, about four o'clock in the afternoon, on June 30th, 1888. It was a Saturday

afternoon. At that time and in that saloon I heard some one ask Henry Kirtland what he was to get out of this lawsuit, or what he and Casperson were to get out of it, and Kirtland said, "Well, never mind, it will come out all right in the end," and that he was confident that some one would give them something for what they knew or for what they did not know. I remember playing pool on Tuesday night, July 3rd, with Kirtland. After the game of pool we went to Kirtland's house, if I remember correctly, and after our return to the house on that evening, Kirtland said to me that he had heard nothing more about the Waldron case, and was in no hurry to, as he wanted to hear from Mrs. Alexander (the present Mrs. Waldron), as she might be willing to give him something
239 for his testimony. During all the time I boarded with Mr. Kirtland he was in the employ of Charles Swartz, at 1919 Prairie Ave., as a butler. If he had to work, it was quite late sometimes in the evening when he returned home, usually about nine o'clock. I remember having a conversation with him on the evening of July 5th, at his house, when he said that he had no money and that no one would loan him any, but if he could get a few hundred dollars out of this Waldron matter he could do something, and he said he did not care which side of the case he got it from. He made that statement on more than one occasion, and said he would use the proceeds to start up a sort of catering establishment—serve dinner to people who do not employ a buttler.

I remember a conversation with Kirtland on July 22nd, 1888, at his house, relative to this same matter, and also at Baum's pavilion that same evening, when Mr. Kirtland, speaking of the Waldron case to me, said that he expected some one would approach him on behalf of Mrs. Alexander in a short time, as she had plenty of money and would like to use it to gain her point.

I remember a conversation I had with Mr. Kirtland about July 6th, 1888, relative to the sale by him of a set of the teeth of Mr. Alexander, and at the same time and during that conversation he said, referring to Mrs. Alexander, that he did not think there was anything crooked about the woman or if there was she was too smart to have any one find it out.

Cross-examination.

By Mr. ALDRICH:

Prior to my present employment as a traveling salesman for
240 the La Esperanza Cigar Company, of 180 Monroe street, at the beginning of the present year, I was a Pinkerton detective for ten years, with the Allen Pinkerton agency. I was detailed in this case a few days previous to the 18th of June, 1888, but my acquaintance and direct communication with Mr. Kirtland commenced on June 18th. I took board in the house. I did not let it be known that I was a Pinkerton operative. The time we came down and I had the conversation with him was on Sunday, June 24th, 1888. The building we came to that Sunday I know as the Owings building.

I didn't go up in the building above the first floor. The directory of the building I saw is on the first floor. We went in from the Dearborn-street side and saw the directory painted up there on the wall. I would not be positive whether it was on wood, stone, or on card-board. I think there was a frame there, an alphabetical arrangement with the list of offices in the building, on the left side of the entrance from Dearborn St. I was in there about half past one o'clock. I am not employed there. We had some difficulty in learning the whereabouts of Mr. Aldrich, as the number of his room was not on the envelope. I did not pay any attention to the letter, as I only was anxious to get the address on the envelope. I do not know whether number 225 is a part of the Owings building or not. I supposed the Owings building extended clear down to the corner, but 225 may be in the Temple Court building or the Heysen building. That is where we went at that time, to number 225, Dearborn-street entrance. I do not think any elevators were running on that Sunday and think that Henry Kirtland walked up to Mr. Aldrich's room. I never was in Mr. Aldrich's office.

In the conversation on July 6th Kirtland said he didn't think there was anything crooked about her. If there was she
241 was too smart to show it. The conversation on Saturday afternoon in the presence of Evans and myself occurred when one of us asked him how this case was coming on, the matter Casperson and him had talked about, and Kirtland said, "Never mind, that will come out all right in the end, either one way or the other." He says, "What I do know or what I don't know, it is just as much money one way or the other."

I never saw Mr. Aldrich before, to know him, in my life and don't know anybody connected with his office, but there had been somebody to Kirtland's house. I commenced boarding there on the 18th of June and I think I left there on the 22nd of July. After that I did no more work on the case except one Sunday following. Kirtland said he met Mr. Aldrich at his office there that Sunday and he was talking with him all the time I waited for him down-stairs. I saw no conveyance on either side of the building. We came down-town that day alone. Evans left us at Bergman's saloon. He was going to a picnic.

Testimony of Edward A. Dreyfuss.

Called on behalf of the defendant and examined by Mr. McCoy:

My name is Edward A. Dreyfuss. I am employed at 195 La Salle street, in a place known as the Saint Cloud saloon and restaurant. I know John B. O'Neil. I became acquainted with him about six or seven weeks or two months ago. I was at one time in the employ of Mr. Edward H. Waldron. I went with Mr. O'Neil to the office of Mr. Walker, the attorney for the defendant in this case. After that we went to the Saint Cloud saloon and had a little re-
242 freshment. I remember talking with Mr. O'Neil in that saloon on that day. I saw Mr. E. H. Waldron there on that occa-

sion while I was talking with Mr. O'Neil. As Mr. O'Neil was standitg there we were talking, and just at that time speaking about Mr. Waldron, and while we were standing there talking Mr. Waldron happened to come in, and I heard somebody say, "There he is now," and I looked around and saw Mr. Waldron come in. Mr. O'Neil was still talking. Mr. Waldron came up and said, "Can I see you a minute?" I paid no attention to that, as though I didn't hear him. So Mr. O'Neil said, "The gentleman is speaking to you." I looked around and said to Mr. Waldron, "I am busy now. I will see you in a few minutes." He said, "I will have a little lunch. I want to see you before I go away." I said, "All right," and we still kept on talking, and I took a cigar and a little more refreshment. That is about all. The gentleman that Mr. O'Neil called my attention to that was speaking to me was Mr. Waldron. He said he would like to see me. Mr. Waldron was as close to us—some four or five feet away. Mr. O'Neil was standing with his face toward Mr. Waldron and I was standing with my back to Mr. Waldron, as he came in. Mr. O'Neil stood facing him. I didn't see Mr. Waldron, and I am a little bit hard of hearing, and I didn't hear him speak to me at all, but I heard a gentleman say, "Here he is." I suppose, of course, he spoke pretty loud, and Mr. Waldron was looking for me. Mr. O'Neil was talking about Mr. Waldron at that time, and he stood looking towards Mr. Waldron, facing that way, and after Mr. O'Neil said to me, "There is a gentleman there speaking to you," I turned around and I said, "I would be at leisure in a minute." Mr. Waldron was standing in such a position that Mr. O'Neil could see him plainly. There was a good light in
243 the place. It fronts west on La Salle street. This was about twelve o'clock in the day. It was about lunch time, and we had some lunch. Mr. Waldron went back and said, "I am going back, and I will have some lunch, and when you get through I want to see you," and he walked back past Mr. O'Neil. He passed within two or three feet of him. I saw Mr. O'Neil looking toward Mr. Waldron. I don't know who he was looking at, but I suppose he must have seen Mr. Waldron. He told me a gentleman wanted to speak to me.

Q. Did Mr. O'Niel say or do anything on that occasion from which you judged in any way that he knew Mr. Waldron or recognized him?

A. I didn't think he knew Mr. Waldron.

Q. He was the first to speak of Mr. Waldron at that time? Did he go right on talking?

A. Oh, certainly; he just kept on talking to me.

Cross-examination.

By Mr. ALDRICH, for the plaintiff:

The way Mr. O'Neil came to go to the Saint Cloud saloon, in the first place, Mr. Early was going to have some lunch-rooms put in there and he sent for Mr. O'Neil. I was in Mr. Waldron's employ, and he told me he had a letter from some party, and I was going

out South, and he told me to stop there and see Mr. O'Neil—whether he knew anything about the letter—and I went to see Mr. O'Neil and we talked about it, and afterwards Mr. Early sent for him to come down and do some electric-work about the lunch-rooms he was going to put in the Saint Cloud. I suppose about a week after that I went with Mr. O'Neil to Mr. Walker's office and he had an interview with Mr. Walker. I was not present at the interview.

244 Mr. Walker asked me to step outside, and I waited outside of the room for him. I suppose he stayed there twenty minutes or half an hour; then we went from there down to the saloon again, and soon after we got into the saloon he was speaking about Mr. Waldron and I was listening, and Mr. Waldron came in a few minutes afterwards, while he was still talking about Mr. Waldron. I didn't know Mr. Waldron was coming there that day; he comes there and gets his lunch sometimes.

I take very little interest in the case. Mr. O'Neil got me to go and see Marius Casperson; that is how I came to go and see him. Mr. Waldron did not request me to go.

Testimony of John Early.

A witness called on behalf of the defendant and examined by Mr. McCoy:

My name is John Early. I am the proprietor of the Saint Cloud saloon and restaurant. I know Edward H. Waldron. I know Edward Dreyfuss; he is in my employ now. I have met John B. O'Neil. I remember the occasion of his being in my place along in November some time. I think it was along between the 18th and 25th of November last, between twelve and one o'clock at noon or somewhere along there.

I was talking with Mr. O'Neil at the cigar stand and he was inquiring for Mr. Waldron, and I told him perhaps he would be down shortly, that he generally got down that way about that time of the day and came in and had a lunch. So, in the meantime, while we were talking, Mr. Waldron came in and I said to Mr. Waldron,

245 "There is a gentleman here looking for you." He wanted to know who it was, and I told him he was standing at the cigar stand there. At that time Mr. O'Neil walked back and stood up at the bar, but he didn't say anything to Mr. Waldron. Mr. Waldron went back and had a lunch. I think as Mr. Waldron walked back Mr. O'Neil was standing facing the door, or direction from which Mr. Waldron was coming, and I had just called Mr. Waldron's attention to the fact that Mr. O'Neil wished to see him. From the position in which Mr. O'Neil was standing at that time he could see Mr. Waldron come in. I don't see how he could help seeing him. Mr. Waldron did not walk up to me at the cigar case. The cigar case is next to the door, and the bar comes next, and from there back are the lunch-rooms. Mr. O'Neil stood at the bar when Mr. Waldron walked up back of him to the lunch-rooms. I think Mr. O'Neil was talking to Mr. Dreyfuss at that time.

I think as Mr. Waldron came up to where Mr. O'Neil was he

stopped and, I think, had a glass of beer, or something like that, right at the side of Mr. O'Neil. I did not observe any signs on the part of Mr. O'Neil of a recognition by him of Mr. Waldron.

Cross-examination.

By Mr. ALDRICH:

I am the proprietor of that place. I sent for Mr. O'Neil to come there. I had some work to do in his line, and Mr. Dreyfuss told me to send for Mr. O'Neil.

246 *Testimony of Dr. Lyman Ware.*

Called on behalf of the defendant and examined by Mr. M'COY:

My name is Lyman Ware. I am a practicing physician, properly licensed by the State authorities. I have been practicing in Chicago for 22 years. I knew Mr. E. S. Alexander and his wife. I treated Mr. Alexander professionally. I was the family physician. I knew of the occasion of Mr. Alexander's death; it was in the latter part of February, 1886; after the death of Mr. Alexander I continued to be the family physician of his widow. I remember the occasion of attending her in an illness in 1886, several months subsequent to the death of Mr. Alexander; that illness was in the latter part or middle of July, 1886; that was the beginning of the illness; it continued two or three weeks, perhaps. I was first called on that occasion just prior to the time of my usual summer vacation, and in consequence of her illness I had to postpone it for a while, and delayed leaving the city in consequence of her illness; the day when I first called, in explaining to me her condition, Mrs. Alexander stated that it was the anniversary of her husband's birth—her former husband, Mr. E. S. Alexander—and that was the 17th day of July, I believe.

That illness was a severe attack of nervous prostration. She was delirious, I should say, for a week or ten days; something like that. I have forgotten the exact number of days. I was in pretty constant attendance; at some stages of the disease, I presume, two or three times a day; there were two other consulting physicians besides myself: they were Dr. Charles Gilman Smith and Dr. Byford; they were in consultation with me daily about the matter;

247 it was a critical illness; it was extremely critical at some periods of the disease.

I know Mr. Edward H. Waldron, the present husband of Mrs. Alexander, that was. I had known him some time prior to this illness in connection with Mrs. Alexander.

I remember the circumstances under which Mr. Waldron was called to the house of Mrs. Alexander at the time of that illness. It was owing to the absence from the city of Mr. Walker, counsel for the defendant. I knew that he had been the life-long friend and legal adviser of Mr. Alexander, and he was absent from the city at the time of this illness, and in his absence Mr. Waldron was notified of the serious condition of Mrs. Alexander.

I think it was my suggestion that Mr. Waldron should be called. I knew that he had been a friend of the family for many years, and in the absence of Mr. Walker, the administrator and solicitor of Mr. Alexander, I suggested that Mr. Waldron be called.

During the course of this illness I was in the sick room on the occasion of each visit. I met Mr. Waldron there. I don't know as I saw him each time that I made a visit, but I saw him occasionally, I know, when I made visits. I think his presence there was more or less dependent upon the critical character of the illness; the more critical the illness the more likely I would be to find him there.

I knew the former butler there in the house; Henry, he was called. I knew the butler, Henry. I do not remember to have seen Henry there during Mrs. Alexander's illness. He was a very faithful attendant on Mr. Alexander prior to his death, but during the illness of Mrs. Alexander on this occasion I do not remember to have seen Henry. I do not remember whether or not I took any meals in the house on the occasion of that illness.

248 During that illness there was a lady friend of the family, a relative, I think, of Mrs. Alexander's, invited there from Ohio—Mrs. Guthrie. She was there constantly. I remember that Mr. Lennebacher was in the house. I don't know whether I met him every day or not, but I did know that he was in the house, although I had forgotten it. I saw enough of him to know that he was there. I may have met Mr. J. C. Guthrie, the husband of Mrs. Guthrie, there, but I don't remember him.

When Mrs. Alexander became convalescent a change of air and scene was recommended to her; that she should take a trip to the seacoast, and she did so. At the time she left for the east on that trip she was in a rather weak condition, not at all strong either physically or mentally. She was decidedly feeble, and certainly in no condition to make a pleasure trip.

During my attendance there, or at any other period of this illness, I did not observe anything of an improper character in the relations or conduct of Mrs. Alexander and Mr. Waldron; nothing more than the care of a friend for the widow of his deceased friend.

I did not attend Mrs. Alexander during any serious illness from the time of Mr. Alexander's death up to the time of this illness in August, 1886. I did not attend her during a period of illness in March or April, 1886, at which Dr. Charles Gilman Smith and Dr. Byford were in consultation with me. I would certainly remember it if I had done so. I can't well be mistaken about it.

Cross-examination.

By Mr. ALDRICH:

I have not examined my books exactly to fix the dates of my visits. Mrs. Alexander had no illness at which I attended
249 her from the time of the death of her husband up to the time of this illness in July. I keep a daily records of my visits and to whom they are made. I will bring it into court covering that period. That is four years back, but I will bring it in.

I was a tolerably busy man and my visits were rather brief.

As to Mr. Waldron's duties there, I suppose he was a general friend of the family, looking after things; that is what I suggested when he was first called—that is, some one to look after the household matters. He had general supervision of the medicine until this Mrs. Guthrie arrived and I think she had complete charge; but until her arrival, if I am not mistaken, he received instructions and a girl of the house that waited upon Mrs. Alexande- carried them out. I didn't observe Henry Kirtland there. I didn't come in contact with him, to my recollection. He may have been there and I not met him. I certainly met him with Mr. Alexander in his illness, but afterwards I have no recollection of meeting him at all.

Mrs. Alexander went East early in August by the advice of the attending physicians. I don't think she could sit up at that time. It seems to me she engaged a berth and went directly to bed. Mr. Waldron, I suppose, went East with her. That was the intention that he should take charge of her.

At the time of Mr. Alexander's sickness Mr. Waldron was a friendly visitor there. That was the beginning of my connection with the family. After Mr. Alexander's death in February, I do not know anything about his visits up to the time of this sickness. I don't know as I was in the house from the time Mr. Alexander died until I was called in July. I was not a caller there except professionally. I don't think it was at Mrs. Alexander's suggestion that Mr. Waldron was selected and sent for; I think it was somebody in Mr. Walker's office. I recollect my calling upon Mr. Walker and I did not find him in and somebody in his office made that suggestion. Whether I called upon Mr. Waldron myself or whether it was somebody from Mr. Walker's office I don't remember.

I don't know how long they were gone East. I left immediately after myself, or possibly on the day before; directly at that time, anyway, and I was away part of the time, and I was somewhat late in returning myself, and so I don't know.

At the time Mr. Waldron was sent for Mrs. Alexander was not consulted in the matter. She was in a delirium. I don't remember being present one evening when she was in a delirium and imagined there was a lady standing at the foot of her bed, and she wanted the lady put out of the room.

Recalled and further examined:

I find that in February, 1886, I was in attendance upon Mr. Alexander, and that is the last date I have in 1886 up to the 17th day of July, when I was called to attend Mrs. Alexander. My books confirm my recollection of the dates, as before testified to by me.

STATE OF INDIANA, }
Tippecanoe County. }

In Circuit Court, April Term, A. D. 1860.

MARY A. BEAUCHAMP }
v. } Divorce.
WILLIAM W. BEAUCHAMP. }

Before the Hon. Charles H. Test, sole judge of said court.

Mary A. Beauchamp, your petitioner, would represent to your honor that she is now and for three years last *last* has been a *bona fide* resident of the State of Indiana; that on the third day of April, 1857, she was married to William W. Beauchamp, whom she prays may be made defendant herein; that since her marriage she has at all times conducted herself in all respects in a manner becoming a devoted and affectionate wife, but that said defendant within
256 a few days after her said marriage abandoned her, and since that time has totally and wholly neglected to make any provision whatever for her support or that of her child, the issue of said marriage; that since said abandonment she has but once seen said defendant, nor has she during said time heard from him except indirectly.

She further states that she is informed and believes that said defendant is now a resident of the State of Ohio; that she has no means of ascertaining his pecuniary circumstances, but she prays that in view of the facts and circumstances in this case that the bands of matrimony now existing between your petitioner and said defendant be dissolved, annulled, and set aside, and that a decree of five hundred dollars be made by said court against said defendant for alimony, and that a decree will also be made giving the care and custody of William E. Beauchamp, aged about 3 years, the only issue of this marriage, to this petitioner, and other proper relief.

I. N. STILES,
Att'y for Petitioner.

STATE OF INDIANA, }
Tippecanoe County. }

Gustavus A. Wood, being duly sworn, says that he has no interest in the decision of the above petition for divorce, but that he is informed and believes that said William W. Beauchanp is now a resident of the State of Ohio, and further says not.

GUSTAVUS A. WOOD.

Subscribed and sworn to before me this 9th day of January, 1860.

[L. S.] I. N. STILES,
Notary Public.

Make publication.

STILES, *For Pl'ff.*

And thereupon publication was made in accordance with
257 the above precipe, and this cause was placed upon the bench docket of said court as a cause therein pending.

And afterwards, to wit, at a term of said court began and held at the court-house, in the city of La Fayette, Ind., on Monday, the 9th day of April, A. D. 1860, the same being the second Monday in said month and the time fixed by law for holding a term of said court, before the Honorable Charles H. Test, sole judge of said court, the following proceedings were had in the above-entitled cause and entered of record in the order book of said court on the days and dates indicated as follows, to wit:

THURSDAY, *April* 12, *A. D.* 1860—4th day.

MARY A. BEAUCHAMP
v.
WILLIAM W. BEAUCHAMP. } Complaint for Divorce.

Comes said plaintiff, by her attorney, and files the following notice and affidavit herein, to wit:

STATE OF INDIANA, *Tippecanoe County,* } *ss:*

Tippecanoe Circuit Court, to April Term, A. D. 1860.

MARY A. BEAUCHAMP
vs.
WILLIAM W. BEAUCHAMP. } Petition for Divorce.

Be it remembered that on this 9th day of January, A. D. 1860, said petitioner, by I. N. Stiles, her attorney, filed in the office of the clerk of Tippecanoe circuit court, in the State of Indiana, her petition for divorce against said defendant, and also the affidavit of a disinterested and competent person that said defendant is not a resident of said State of Indiana. He is therefore hereby notified of the filing of said complaint and the pendence of said suit,
258 and that unless he personally be and appear before the judge of said court on the first day of the next term thereof to be holden at the court-house, in the city of La Fayette, in said county, on the second Monday of April next, and then and there on or before the calling of said cause plead, answer, or demur to said petition, the matters and things therein charged and stated will be taken as confessed and true against him and heard and determined in his absence and decreed accordingly.

Witness William R. Ellis, clerk of our said court, and
[L. S.] the seal thereof, affixed at office, in La Fayette, on this 9th day of January, A. D. 1890.

WM. R. ELLIS, *Clerk.*
H. C. TINNEY, *Dep.*

STATE OF INDIANA, }
Tippecanoe County. }

James P. Lane, being sworn, upon his oath says that he is the editor and one of the proprietors of the La Fayette Weekly Journal, a weekly newspaper of general circulation printed and published in the said county of Tippecanoe, and that a notice, a copy of which is hereto attached, was published in said newspaper for three successive weeks, to wit, on the 13th, 20th, and 27th days of January, A. D. 1860, and further says not.

JAMES P. LUSE.

Subscribed and sworn to before me this 12th day of April, 1860.
[L. S.] I. N. STILES,
Notary Public.

Whereby it is proven to the satisfaction of the court that said defendant had been legally notified of the pendence of this suit; thereupon, on motion, she is three times called, and come not, but herein wholly makes default, and day is given.

SATURDAY, *April 14th, A. D.* 1860—6th day.

259 MARY A. BEAUCHAMP *vs.* WILLIAM W. BEAUCHAMP. } Complaint for Divorce.

Comes said plaintiff, by Stiles, her attorney, *sna* said defendant having been heretofore defaulted in this behalf, thereupon comes Miller prosecuting the pleas of the State of Indiana, and on motion this cause for trial is submitted to the court without the intervention of a jury, and the court, after hearing the evidence and being fully advised, find for the plaintiff that the matters charged and stated in said complaint herein are true as therein charged, and that the b*ann*s of matrimony existing between said plaintiff and said defendant be, and the same are, by the court dissolved, annulled, revoked, and set aside to all intents and purposes, according to the statute in such cases made and provided; and the court further order that said plaintiff do have the care and custody of said infant child mentioned in said complaint, issue of said marriage, and that she recover of and from said defendant the sum of four hundred dollars as and for alimony, and also the costs and charges in this behalf.

260 And afterwards, to wit, on the 28th day of February, A. D. 1866, the following fee bill was issued, which was returned and filed on the same day; which fee bill, together with all endorsements thereon, reads as follows, to wit:

THE STATE OF INDIANA, } *sct:*
Tippecanoe County, }

State of Indiana to the sheriff of Tippecanoe county, in said State, Greeting:

Whereas in a case in the Tipp. circuit court, wherein Mary A. Beauchamp was plaintiff and William Beauchamp was defendant, determined at the April term, 1860, the following costs were made by said plaintiff and taxed against said defendant, to wit:

1860.

Jan. 9.	Filing comp., 5; prec., 5; action, 5; doc., .30...	45	
	Making publication in journal.....	75	
	Ap'l term motion, .10; filing notice, 5; order, &c., .10.....	25	
	Mo., .10; decree, .20; judg't, .20; order, .10....	60	
	Entry, .15; sat., .15; tax fees, .10.....	40	
			2 45
	Docket fee to Tipp. county.....		1 00
	Printer's fee, to Journal.....		6 00
			9 45

You are therefore hereby commanded to levy the said costs of the property of the said plaintiff in your county subject to execution and have the money at the clerk's office to satisfy said costs, and return this writ in one hundred and eighty days — your doings thereon.

Witness my hand and seal of said court, affixed *affixed* [L. S.] at office, in La Fayette, on this 28th day of Feb'y, A. D. 1866.

W. R. ELLIS, *Clerk.*

(Endorsed on back:) Tipp. circuit court. William W. Beauchamp ads. Mary A. Beauchamp (now Waldron). Fee bill. To the sheriff of —— county, returnable in 180 days.

261	Clerk's fees.....	2 45
	Docket fee.....	1 00
	Sheriff's fee.....	
	Printer's "	6 00
	This writ, &c.....	50
		9 95

Issued at the instance of W. R. Ellis, clerk.
14–222.

Filed Feb. 28, 1866.

W. R. ELLIS, *Clk.*

MARY A. BEAUCHAMP
v.
WILLIAM W. BEAUCHAMP. } Complaint for Divorce.

Costs of Suit.

1860.

Jan. 9.	Filing comp., 5; prec., 5; action, 5; docketing, 30	45	
	Making publication in journal, 75	75	
	April T., motion, 10; filing notice, 5; order & reading, 10	25	
	Motion, 10; decree, 20; judgment, 20; order, &c., 10	60	
	Entry, 15; satisfaction, 15; taxing fees, 10	40	
			$2 45
	Issuing fee bill		50
	Docket fee to Tippecanoe county		1 00
	Paid Luse & Wilson, printing fee in journal		6 00
			$9 95

Received of Dan'l Royse, cl'k, our fees, Aug. 6, 1866.

LUSE & WILSON.
WILSON.

1866.

Feb. 28. By cash of sheriff $9 95

262 THE STATE OF INDIANA, } *sct:*
Tippecanoe County, }

I, Byron W. Langdon, sole judge of the Tippecanoe circuit court of Tippecanoe county, Indiana, and residing therein, do hereby certify that Henry C. Tinney, whose genuine signature, which is well known to me, appears to the foregoing certificate and attestation, was on the 19th day of January, A. D. 1889, and still is the clerk of said court, and by law has the custody of all records of said court, and that said certificate and attestation are in due form of law, and that the seal of said court is affixed thereto, and that full faith and credit is due to all the official acts of said clerk.

In witness whereof I have hereunto set my hand, at La Fayette, Ind., on this 19th day of January, A. D. 1889.

BYRON W. LANGDON, *Judge.*

THE STATE OF INDIANA, } *sct:*
Tippecanoe County, }

I, Henry C. Tinney, of the Tippecanoe circuit court of Tippecanoe county, Indiana, do hereby certify that Byron W. Langdon, whose genuine signature, with which I am acquainted, is affixed to the foregoing certificate, is the duly elected and qualified judge of said court.

In witness whereof I have hereunto set my hand and affixed

Seal Tippecanoe Circuit Court, Indiana.

the seal of said court, at office, in La Fayette, Ind., on this 19th day of January, A. D. 1889.

HENRY C. TINNEY,
Clerk Tippecanoe Circuit Court.

263 THE STATE OF INDIANA, } *sct:*
Tippecanoe County, }

I, Henry C. Tinney, clerk of the Tippecanoe circuit court of Tippecanoe county, Indiana, do hereby certify the above and foregoing to be a full, true, and complete copy of all papers filed, proceedings had, and judgment rendered in the above-entitled cause, and also the fee bill issued for the costs, together with all indorsements thereon, and also so much of the fee book as contains the record of the taxation and payment of the costs in the above-entitled cause, as the same appears of record and on file now remaining in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the office, in La Fayette, Ind., on this 19th day of January, A. D. 1889.

Seal Tippecanoe Circuit Court, Indiana.

HENRY C. TINNEY, *Clerk.*

264 (Witness resumes:) I don't remember who paid that fee bill. I think immediately after receiving it I went right to her store with it then, or to the house, and asked her about it. She admitted the divorce.

Q. What explanation did she make of it?

Which question was objected to by the counsel for the plaintiff.

The COURT: That objection will be sustained. We will pursue with this witness the same course that we have with regard to Mrs. Waldron, that the conversation between them will not be competent.

Mr. WALKER: I want to understand the ruling of the court, and will of course conform to it and save time. The question that was presented to the court before was as to conversation between the plaintiff and her husband during the marriage relation. It was excluded. Now we bring the witness, who at that time was the husband, and, as we think, under the statute is a competent witness to testify. Does your honor hold that the ruling shall apply to him as well as to the plaintiff?

The COURT: I think it applies to him just the same as it does to the plaintiff. That statute can't mean that you can have the conversation of one and not of the other. No such absurd construction can be put upon the statute. If the conversation is excluded of one, the conversation of the other must be excluded, because both are necessary to understand what it was.

And thereupon the court sustained the objection to said question.

To which ruling of the court counsel for the defendant then and there duly excepted.

(Witness resumes:) This matter of the divorce from her former husband was a matter of conversation at that time between the plaintiff and myself. Up to that time I had received no notice from any source as to whether or not Beauchamp, the former husband, was living or dead. I first learned that Beauchamp was still living a year or a little more after my marriage. That also was a matter of conversation and discussion between the plaintiff and me.

This knowledge I received first of the divorce proceedings,
265 and afterwards that the divorced husband was living, produced some feelings of bitterness between me and the plaintiff. I felt that I had been deceived, not being told about the divorce proceedings and the earlier marriage. I hadn't been told. The first time I heard that the divorced husband, Beauchamp, was living was a year after our marriage, when I learned he had visited her at her home in La Fayette after the divorce and after our marriage. I learned that fact, as near as I remember, about a year after my marriage, at the same time I learned that he was still living. That was a matter of controversy between us.

We lived in La Fayette in the house that I have spoken of purchasing continuously until about 1870. Then we went first to a boarding-house called the White house and boarded there a short time. Then we moved into what they called the Wallace brick on 6th street. Our family was composed of her mother, her brother, her son, and a woman by the name of Leah A. Hotz (who was working in her store), and myself. She continued business in the store a couple of years or maybe a little longer after our marriage. Her son was called Ed. Beauchamp when we were married. I don't know just when it was, but afterwards he went by my name while he was living at home. I think he continued under that name. I don't know what he did when he was away from home excepting in writing me letters or something like that.

My own son was born on the 11th of May, 1869. His name is Willard Winfield Waldron. The other son, son of the plaintiff, I could not tell how long he remained at home with us. He has been back and forth always. I don't think he was over fifteen when he left home first. I never knew his age, but just to judge of his age at that time I should say he was about fifteen. Up to that time he was never in any office or at work for any person, either

myself or anybody else. He never went into my own office to
266 work. I procured lots of situations for him. The first one, I think, was at the time when I was assistant superintendent of the New Albany road, and I think the first place I gave him there was peddling on the train for a company at Indianapolis or Cincinnati that was doing the business. I got him a place there.

The conduct of this son of the plaintiff, Ed. Beauchamp, at home and at La Fayette was frequently a matter of controversy between myself and the plaintiff. The boy caused us a great deal of trouble in almost every respect; he would steal everything he could lay his hands on of my own and pawn it. I would have to go to the pawn shop and get it back. This was after he went on the train; before that time the boy was a matter of contention between me and the

plaintiff, and there was feeling grew out of these contentions or discussions. I don't know just how frequently; they occurred quite often. At the time my son was born this older boy must have been eleven or twelve years old; somewhere along there. After he went on the train I don't remember how long he remained there, but it was a very short time; he was living at home at the time; after that I don't know where he went; he was roaming about the country a great deal. I gave him situations repeatedly. After I built the C., L. & C. road I gave him positions there on the train half a dozen times, I guess, and he would leave them, and while I was on the Ohio & Mississippi road I gave him a position there as brakeman on a passenger train; he never had any position of any importance before that and kept none of them at all; he would work a few days and disappear.

I know of my own knowledge of his getting into trouble and difficulty with the authorities. At one time he robbed the ticket office on the Ohio & Mississippi road; at another time he robbed
267 the ticket office of the Lake Erie & Western road at Hoopestown, for which he served a term in the Illinois State's prison. After he had grown to man's estates, I did forbid his coming home and forbid my wife's receiving him. I don't think I refused him the house until after he came from the States prison at Chester, Illinois. When he came from there his mother thought he would turn over a new leaf and be a better boy and I took him home to the house and told him he might stay there, and if he would behave himself I would go to Texas with him and buy some land and cattle there and start him in business there. He promised to go, and I don't think it was more than three days after that before he stole my violin and guitar and took them down town and pawned them. That fact was brought to the attention of the plaintiff—decidedly so—and was the subject of angry discussion. I forbid him my house at that time. The plaintiff was aware that I forbid his coming to the house. She was the one I told not to let him come there. He must have been twenty-one or twenty-two years old then; I don't know much about his age, but I guess it at about that. I gave the plaintiff reasons at that time for forbidding him the house. I knew he had been there repeatedly clandestinely after that; the plaintiff was charged with knowledge of that. I did not know how long he was in the habit of visiting the house or coming to the house after I had forbidden his doing so. He was always admitted clandestinely. I generally would not find he had been in the house until he had left. (The witness is shown a letter and asked if from it he can fix the time the boy was in the penitentiary at Chester and states that the letter does not refer to that matter.) He was in the Indiana State's prison at Michigan City, Indiana, also. I can't recollect the time he was in the one or the other. The conduct of this Beauchamp and the discus-
268 sions I had with his mother, the plaintiff, relative to that made our domestic relations at home very unpleasant. He was a source of annoyance to me, and expense to me all the time, and his mother would indorse him in everything he would do ap-

parently that I would have stopped. She would admit him in the house. He would be kept there nights for weeks at a time. He would be sent clothes when he was in State's prison. When he was traveling around the country he was getting into jails and money was sent to get him out continually, and I would find fault with it. The first knowledge I had of my clothing and articles being sent to Beauchamp by the plaintiff while he was in prison, was when I first got out after my leg was broken in 1884. I found a receipt in my pocket for a package of goods sent to the Michigan City penitentiary while he was there.

I went to Saint Louis in 1875, and returned to La Fayette in 1877. I don't recollect just the months or dates I went, but it was two years that I was manager of the Ohio & Mississippi railroad. After leaving St. Louis we made our home in La Fayette, returning there in 1877. After our return I was general manager of the La Fayette, Bloomington & Muncie, and general superintendent of the La Fayette, Muncie & Bloomington railroads. There were three roads operated in connection with each other. I only continued in that position a short time. When I first went to La Fayette the road was in the hands of a receiver, Gen. George H. Chapman, and the receivership was terminated some time after that, and the three roads consolidated under the name of the Lake Erie and Western road, and I was general manager of that for six years. I think it was operated under the receiver somewhere in the neighborhood of two years and a half, possibly. The receivership was under
269 the direction of Judge Gresham, then of the United States court in Indianapolis. I continued with that same road after the receiver was discharged until 1883. After the discharge of the receiver, my superior officer was Columbus R. Cummings. He resided at that time in Pekin, Illinois. After our return from St. Louis to La Fayette we boarded for a season at the Lahr house, a hotel, and then left there and boarded at the Stockton house and remained at the Stockton while I was building. I built the house at that time that has been mentioned as the homestead.

There were four and a fraction acres of land I believe. The house is a large modern brick, bay windows front and sides, surrounded by big forest trees, nicely laid out grounds, a large brick stable and carriage house and outbuildings. There were pigeon houses and pheasantries and a chicken house and so on. That must have cost me something over twenty thousand dollars; about twenty-two thousand dollars, and for the ground itself I believe I paid thirty-six hundred or thirty-seven hundred dollars.

I heard the plaintiff testify in this case. That is the property referred to by her as the homestead where she is now living. I think that house was completed and we took possession of it to make it our home in 1877. I commenced building the house very soon after returning from La Fayette and it was the fall of 1877 or 1878 that we moved into the house. At that time the members of our family were her mother and myself and our son and herself and part of the time her first son, Ed. Beauchamp, whenever he could get there, he was there.

When I was married to the plaintiff I was in my twenty-first year. I do not know what the age of the plaintiff was; I never could find out her age. I heard her testify as to her age.

270 Q. Did you ever hear any contrary statement as to her age from any source whatever from the age she gave here on the witness stand?

A. Yes, sir.

Which question and answer were objected to by the plaintiff, and a motion entered that they be stricken from the record.

Which motion was sustained by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

(Witness resumes:) When I married the plaintiff I was receiving eighteen hundred dollars a year salary, a hundred and fifty dollars a month. At that time I was cashier for the New Albany road, at La Fayette, and very soon after our marriage I was promoted to general agent and given charge of the northwestern division of the road from La Fayette to Michigan city. I think I then received about twenty-five hundred dollars a year salary. After that I was made assistant superintendent of the road and given charge of the property from Greencastle to Michigan city at an increased salary. I don't remember the different increases I had. Then Judge Gresham gave General Chapman charge of that road, and I kept my position until another man came to take the position; then I left there and built what is called the "Kankakee line," the "Big Four" road. I built that road and operated it as general manager five or six years, until I went to St. Louis. I left that road and went to St. Louis, to the Ohio and Mississippi road, where I took the position of general manager of the road at a salary of ten thousand dollars a year.

After I returned from St. Louis my first salary on the Lake Erie & Western road, I believe, was five thousand or six thousand dollars a year. I drew pay from three of the roads there. I

271 left the Ohio & Mississippi road to take this position with the Lake Erie & Western and other roads. I don't remember just what my aggregate salary was there. During all these years that I have named I was not in receipt of any income except my salary which I received for my services. I left railroading in 1883.

For two or three years after I built my homestead I added to the grounds. At one time I added a tract of 47 acres adjoining it, and another of 5 acres, and another of 4 acres, and I put on there fancy stock, Jersey cattle, and Hambletonian and Clydesdale horses and thoroughbred sheep and thoroughbred hogs. It was a fancy stock farm.

When I left the railroad I left because I got worn out. I was tired out and discouraged. I left because my family troubles had become so serious that I could not stand it any longer to stay on the railroad. My humiliation there was too great. Those troubles consisted in Mrs. Waldron going to the general office and talking

with the general officers of the road about me; finding fault about some women on the road. I have personal knowledge of her going to the general officers of the road I worked for. The charge she made against me generally was that I was running around the country with some other woman—something like that. It was always a woman in the case. I guess the first charge or complaint of this kind was made the first year after I was married. I think the first winter I was married a woman appeared on the scene—the first winter of my married life. The plaintiff was jealous to the extreme. She always was, and it practically nearly terminated my social relation in the end. She was jealous of any woman that would treat me with any consideration at all. If I received
272 social attentions from others or extended social attentions to others they were not well received by the plaintiff. That was the source of constant and angry discussions on her part. I am quite certain the first time it ever came up was the winter following my marriage. Those manifestations of her feelings were extended to ladies that were met in social circles there in La Fayette and away from there. I suppose it would be considered the best society there. We never moved in any other, and there was no better there.

From the time of our marriage down to the time I left the railroad in 1883 the exhibitions of jealousy on her part were of frequent and continual occurrence. During this time there was not the slightest cause for her entertaining that feeling. I left the service of the Lake Erie & Western railroad in 1883. Since that time I have been connected with no railroad. There was a company organized since of which I was made president, but the railroad was not built. My active work in railroading terminated in 1883. At that time the relations, social and domestic, between the plaintiff and myself were of the most unpleasant nature. After leaving the railroad in 1883 I devoted my time to looking after my farming interests and stock business connected with the farms. I had a couple of farms. I was in La Fayette part of the time and I was away part of the time, but my home was in La Fayette. The question of a separation between me and the plaintiff was talked about a good many years ago—that is, I threatened to leave a good many years ago if things did not change. I can remember one instance when we were living on 6th street, in what I mentioned a few moments ago as the Wallace brick. I threatened to leave at that time. I was then engaged in building the C., L. & C. road or "Kankakee line." I threatened then to go away and not come back.
273 The reason was jealousy on the part of the plaintiff, and I told her myself.

The first I learned of her relations with Beauchamp before marriage and of the birth of her son immediately after marriage or soon after marriage was about the time I left the railroad. All those matters culminated about the time I left the Lake Erie & Western railroad, in 1883. That helped to bring about my leaving the road. It was the culmination of the whole thing at that time; whether just before or just after I could not tell, but it was about that time.

Prior to that time I had no knowledge of the relations which existed between Beauchamp and the plaintiff prior to the time of her marriage. It had not been communicated to me by the plaintiff or by any other person until that time. As to the effect that knowledge had on our domestic relations, I expect that was the last hair that broke the camel's back. That was the subject of crimination and recrimination between us. After 1883, I don't think I had disposed of my stock and wound up the business until 1886 or 1887. The business was not profitable. After leaving the services of these railroads I was engaged in the hay business.

274 Mr. WALDRON resumes:

In 1884, aside from the stock farm, I was in the hay and grain business. Thomas L. Brannan was interested with me during all the time I was in that business until some time in the fall of 1885. His family was then in Fostoria, Ohio. He put in nearly all his time with me, and he was at my house frequently.

I left my home and took up my permanent residence at the St. Nicholas hotel in the winter of 1884 and 1885. It was not far from the first of the year 1885. I had broken my leg in the fall of 1884. I was at the Lahr house at the time of the accident. I had taken rooms at the St. Nicholas hotel, about four blocks, I think, from the Lahr house. I only got in town, I think, a day or two days before my leg was broken. I came to town from in the country about eighteen or twenty miles west of La Fayette. During that summer I was absent from La Fayette a large part of the time. When I came to town I went home.

When I took rooms at the St. Nicholas hotel, before my leg was broken, my intention was to remain there then. I had contemplated divorce proceedings prior to that time, in 1884, and before that, too. The question of a separation had been talked of repeatedly before that, but I don't think the question of divorce. The question of leaving home was brought up when I lived in the Wallace brick, on 6th street, during the time I was building the C., L. & C. road; it must have been, I think, about 1870 or 1871. I was building that road during the Chicago fire, and at one time, while we lived in the Wallace brick, that subject was mentioned. It was not discussed a very long time. I was away from home then
275 pretty nearly all the time, and this occurred upon one of my return visits. I could not tell you what brought on that discussion of a separation at that time, there were so many of them. The expression of jealousy towards me was almost weekly, and, I might say, an almost daily matter. I don't know just what the cause of that trouble was, but I remember the scene distinctly.

I did finally separate from home and leave it the winter following my broken leg. I think it was in January; it might have been in F bruary. I was confined to my bed and room from this fractured limb but a very short time. I went down town and voted a week from the day my limb was broken. The four principal bones of my right ankle were broken—a compound fracture. During the time I was suffering from that accident the life between us was not

of a pleasant character. Complaints were made by the plaintiff of me all the time—whiskey and women and inattention to home and inattention to her. She said I had a private car.

Answer objected to by counsel for the plaintiff.

The COURT: You can't tell what she said.

To which ruling of the court counsel for the defendant then and there duly excepted.

The complaints of my habits of dissipation and drink were first made about the time I left the Lake Erie road, in 1883.

I could not name the exact months I was away from my home in 1885, but I think I left in January; it might have been in February. I think I went to the Lahr house and was there a short time, and I left there and went to the Saint Nicholas hotel. While I was crippled my office was in a room in the hotel. After I got so I could get out without crutches I moved to the corner of Main and 5th streets and opened an office there.

When I left my home in February, 1885, I looked upon it
276 at that time as a separation of a permanent nature. I did not intend to return. The plaintiff had knowledge that I had left home with the expressed intention of having a permanent separation, and I was not at home at all for seven months after that time. My washing was not done there.

I had communication with the plaintiff during those seven months on matters aside from business matters in reference to my absence. I don't remember of her coming to the hotel but once, or possibly twice. I did not change my plans at those interviews or at any interview until in September. I suppose my son Winnie was living at home with his mother during that time. He was working for me part of the time. I do not know where the other boy, Beauchamp, was.

I returned home, I think it was, in September, late in the year of 1885. At the time of my return home peace and harmony were not restored between myself and the plaintiff. I did not go on that account. I went home wholly and entirely on account of my son. That was an understood matter at the time, and the future of my child was the only thing on earth that induced me to return. I had an interview with the plaintiff before returning home and the day that I returned. My brother, Emory Waldron, and his wife were present at that interview and my son part of the time; I don't think he was there during the whole interview. My brother and his wife accompanied me home and they and the plaintiff's mother were there that night. My mother-in-law was always there. They were there that evening. My brother and his wife were at the table at dinner that evening. I don't remember whether Winnie was or
not. Mrs. Russell, the plaintiff's mother, was confined to her
277 room pretty nearly all the time of my married life—for twenty-two years; I was told by her that she had been for about twenty years before my marriage confined to her bed. I would not call it bed-ridden. She would go to her meals occa-

sionally; then again she would not. She would occasionally go and visit her son and stay with him two or three weeks and then come back. She would occasionally go driving.

From the time my married life commenced on to the time of my return in September, 1885, I met and defrayed the expenses of my family—household expenses—every-day expenses of the household.

In a day or two after my return home from the Saint Nicholas hotel in the fall of 1885 the relations between myself and the plaintiff were just about the same as they had been. There was not any change at all on the part of the plaintiff towards me. It was precisely the same old story that existed during the past.

At the time my leg was broken I did not request to be carried home to the house. After my leg was broken I had them take me to the Saint Nicholas hotel, where I was given a room, and the next morning I was laid upon a cot bed in a carriage and driven home. I do not know by what direction I was taken there. My leg was set at the Saint Nicholas hotel and I didn't go home till the next forenoon.

During the fall of 1885 and in 1886 I was taking care of my grain business and hay business and closing out my stock business that winter. I had been engaged in the business of pressing hay for market and I closed that out, not immediately but as rapidly as I could.

In 1886 I associated myself with some gentlemen of Indianapolis and Terre Haute and took the position of vice-president and manager of the Deeds Metallic Packing Company. During the winter of 1885 and 1886 I don't know what part of the time I was
278 at home. I was away a good deal that winter. The Metallic Packing Company was a corporation. I managed it, and by the direction of the company I located the principal business office here in Chicago as a part of the agreement between us. The office was opened in Chicago along in May or June, 1886. I rather think it was in June. When I first opened the office in Chicago I did probably return to La Fayette two or three times to manage my business matters there. I think I left La Fayette permanently some time prior to opening the office here. I can't tell the month. When I was here in Chicago I was on the business of the company, and I was here in Chicago when I opened the office. From that time I have never resided in La Fayette at all. At the time I left La Fayette and came to Chicago and opened my office I never intended to return and live with the plaintiff, and so stated. I don't know whether or not the plaintiff was advised of my intentions from any one but myself. I don't know that she had any knowledge of it except what she got from me.

I think I was acquainted with Mr. and Mrs. E. S. Alexander before the death of Mr. Alexander twelve or fifteen years. As an officer of the various railroads while I was connected with them I had business transactions with Mr. Alexander in his lifetime. I bought supplies from him. He was in the railroad-supply business. I rarely ever came to Chicago without meeting him. My relations toward him of a personal character were decidedly friendly—

warm personal friendship. I looked upon him as the best friend I ever had. He was in La Fayette during those years once in awhile, not frequently, but he has visited me in La Fayette on several occasions, and in La Fayette he was at my house. He was acquainted with the plaintiff.

279 When I was in Chicago prior to his last illness it was customary for me to go to his house and stay all night very often when I came to Chicago. I remember when his last illness occurred. That was in the fall of 1885 and the winter of 1886. I think he became dangerously ill immediately following Christmas of 1885. It was the very last part of the year of 1885; during the last part of December. I don't remember when I was at his residence the last time prior to that time, but I hadn't been there in a long time. I don't think I had been there in three years; more than two years, anyway, and during that two years I had not met the defendant. I don't think I had met either Mr. or Mrs. Alexander during the two years prior to December, 1885. I don't think I met them after I quit the railroad service until I came here during his illness in the fall of 1885. I would like to correct that last statement. I met Mr. Alexander at his request a short time prior to his last illness. He asked me to go down to Tolleston, in Indiana, where he owned a farm; had some cattle and stock that I bought for him. He wanted me to take charge of it and sell it all. He had same fancy stock. He made the same mistake I did. I first noticed his illness there—his physical weakness—at that time distinctly.

I made an arrangement at that time to take care of that stock for him and get rid of the stock for Mr. Alexander, and I went there on one occasion to look after the stock in connection with that business, and that is the only time I recollect of meeting him during those years. I don't think I met him before. I think I did not meet his wife during that time. He wrote to me and I came in here, and I think we left at once on the Michigan Central road and went to Tolleston.

280 During his illness and during the last of December I saw him at his house. At that time he was very ill. Immediately after my going into the house he came very near dying. Dr. Hammel afterwards told me if he hadn't met with assistance at the time that he did he would have died. It was prompt action and prompt applications that saved his life. I remained that time all night, I think, and returned to La Fayette on the morning train. I might have stayed during the day and went down on the night train. I think at that time I came at the direct request of Mr. Alexander himself. I was called here afterwards more than once. I came here two or three times, possibly four times, during his illness. I think his illness grew worse and of a more critical character as my visits continued. I don't remember at whose request I came after my first coming. I did receive telegrams. I don't remember who sent them; the telegrams were merely notifications to me of his condition and whether I had better come; if he grew worse I would come up.

I did not come here at all during his illness except to visit him as a friend whom I considered critically ill. I had no other motive or thought at that time except to visit him as a sick friend.

I don't remember just the date when he went to Louisville, but I know he went to Louisville. I think it was the latter part of January. I was not in Chicago during the time he was in Louisville. I was not in that house at all after he went to Louisville until after he was brought home and died there. I was never inside the house. The next time I was there after he left for Lonisville was the day following his death. I was not there at his death.

I did not receive any message, request, or communication from Mrs. Alexander or any other person to visit her home or
281 Mr. Alexander's home or residence during the time Mr. Alexander was in Louisville. I was in New York city at the time of his death. I left La Fayette for New York city at four o'clock on Saturday afternoon previous to his death.

Prior to his death I arranged with Mr. Jewett, then president of the Chicago and Atlantic railroad, to take the position of vice-president and general manager of that road, to be located here in Chicago. That was the business that called me to New York. The arrangements were completed then. They were not carried out. The Erie road brought suit in Judge Gresham's court here for the appointment of a receiver. The question was argued, and finally the bondholders came to an agreement, and they changed the mangement of the road. Mr. Jewett retired and that left me out. I remember when it occurred, and that matter was in court. I came here during the argument, and it was some time after Mr. Alexander's death and burial. My first negociations with Mr. Jewett relating to taking that position on the Atlantic road commenced personally when I went to New York on the Saturday previous to Mr. Alexander's death, and I was to have met Mr. Jewett on Monday, but, Monday being Washington's birthday, the interview was postponed until Tuesday.

That road, the Chicago and Atlantic, extends from Chicago east. It is the western connection of the Erie road. The two together form a through line to New York. The business I contemplated was to take the position of vice-president and general manager of that road, with the headquarters in Chicago. That was in contemplation before the death of Mr. Alexander, and when that fell through on account of the change of officers I went with the Metallic Packing Company.

282 When I first came here, in the spring of 1886, after the death of Mr. Alexander, until I came here and opened an office and came for the purpose of opening the office, I did not meet Mrs. Alexander very often; I think perhaps once a week or perhaps twice a week. After the death of Mr. Alexander Mr. Walker asked me if I would not take charge of the disposal of the fancy stock Mr. Alexander had at Tolleston and go on and carry out the arrangement I had made with Mr. Alexander. Mrs. Alexander was administratrix with Mr. Walker of the estate, and I gave that matter more or less attention at the request of both Mrs. Alexander

and Mr. Walker. I had interviews with Mrs. Alexander, the defendant, relative to that matter, and I also had interviews with Mr. Walker about it, and I had interviews with both at her home relative to that matter.

After the death of her husband I did not at any time call upon Mrs. Alexander that spring except with reference to business matters or merely social calls. I either went there socially or to look after this business matter that I was taking care of for her—this stock farm. I don't remember how frequent my visits were. They were not very frequent. I went there occasionally.

I think the funeral of Mr. Alexander occurred on the twenty-fifth of February, 1886. I reached Chicago at nine o'clock the night of the twenty-fourth. I attended the funeral services. The remains were taken to the depot and carried East. I did not accompany the remains East. I went to the 22nd-st. depot and took the train for La Fayette.

I returned to Chicago a very short time after the funeral, about a week after. I think it was something like a week or it might be ten days after the funeral that the defendant returned from the East. Shortly after that I came to Chicago to have an inter-
283 view with her relative to the stock farm. I stopped at the Grand Pacific hotel when I came here at that time. I was here not more than a day or two. I never stayed more than one or two days at the furthest. I did not stay at the residence on Michigan Ave.

I know Henry Kirtland. I first met him at Mr. Alexander's house. I met him after the death of Mr. Alexander and immediately after the return of Mrs. Alexander from the East. He went East with Mrs. Alexander at the time of the burial of her husband and he returned with her. I don't know how long he remained in her service or employment after she returned of my own knowledge.

After that I gave him employment when I came to Chicago and opened my office here in May or June of 1886. He came to me for employment. He was not at work for anybody when he came to me. I don't think he was at work for Mrs. Alexander then. He did various things for me; he ran on errands—a sort of a general man to do whatever was wanted of him. He did not work for me during the months of March and April. I don't think he worked for me during the month of May. I rather think it was in June, 1886. He was not in my service in any capacity until he went into my office.

Up to the time I opened my office I made my home in Chicago, at the Grand Pacific hotel. I went to the Beaurivage flats after I opened my office here and took apartments there. Henry Kirtland had no regular work in my office and was not under any fixed salary by the month or otherwise. He expected me to go on the Chicago & Atlantic road and he wanted me to get him a position there. He told me he was pretty hard up and he would come down and make himself generally useful, and I gave him a little

something along whenever I had a mind to. He said I
284 might give him whatever I had a mind to; when his rent was due I gave him money to pay that. He might have done some little work as a copyist, copying letters or making out bills, but not much, if he did any. I don't recollect of ever sending him with a note to the defendant at her residence during the time he was at work in my office. I did not send any note by him on any matter unless it was a business matter in connection with this Tolleston farm or some other matter of the estate.

I do remember of rendering service for Mrs. Alexander in connection with the business affairs of the estate. There was a bill sent to Mrs. Alexander by a butcher on Wabash avenue for a large amount of money for meat furnished the house, and she sent that bill to my office with a note accompanying it and asked me if I would look it up for her; that she didn't remember the man and never had any meat from him before. I sent Mr. Kirtland to this man on Wabash avenue and the man said it was a mistake and Mr. Alexander should not have been charged with it, and when it came back I sent Henry Kirtland with the explanation to Mrs. Alexander. If that is sending notes, I have sent notes to her.

During the months of March, April, and May I did not once see Henry Kirtland at the residence of the defendant of Michigan Ave., and during those months he did not call at that residence for directions from me as to business, unless it might be, as I say, sending that bill down there. I don't remember when it was, but I remember that occurrence.

I heard him testify as to his calling at the house to receive directions from me in the morning during those months. I never saw him there once in that house during those three months. I was not stopping at the house there during those months. When in Chicago I was stopping at the Grand Pacific.

285 After I went to the Beaurivage flats Henry Kirtland went there and got the room for me in advance of my going there. I heard his testimony about me going driving with the defendant at the time I was living at the Beaurivage. I think I went out driving with the defendant two or three times, possibly four, during the time I was at the Beaurivage. We generally went out about four o'clock or half past, and I remember one evening going out as late as five o'clock.

I heard the testimony of Marius Casperson. I did not get out of the carriage at Lincoln park with the defendant in the evening and leave the carriage and go for a walk for half an hour. I did not get out of the carriage unless it was when he whipped the horses; then we got out of the carriage. I am not sufficiently acquainted over there to locate the whereabouts that whipping occurred. It was not in Lincoln park; it was this side; it is a long avenue this side with tall trees; it was returning from the park; it was not dark; it was in the afternoon.

As we started down the avenue something occurred to the horse and he began to whip it, and Mrs. Alexander became very nervous and excited and insisted on getting out; it was a victoria, and he

turned up to the curb and we got down out of it and walked up the sidewalk a little ways, and I told her not to get excited, that the horse would be all right. I then went back and told him to put up his whip at once; he didn't want to do it, but did. He said he would not draw a line over the horse again. I said, "All right, that is a matter for you to settle with Mrs. Alexander," and I then patted the horse on the head and got him quiet and he drove him; that was the only time the horse was stopped.

I don't know how long I had known Marius then. I don't think I knew him until I came up during Mr. Alexander's illness;
286 it is possible I knew him before, but I don't know particularly.

I know what his habits were as to drink. He used to drink, and the day he whipped the horse he had been drinking. That is the only time I had any words with him or gave him any directions.

I have no knowledge of any illness of Mrs. Alexander's during the month of March and April, 1886, shortly after the death of her husband. As near as I can remember, she was taken ill between the 15th and 20th of August, 1886. Dr. Ware and Dr. Charles Gilman Smith and also Dr. Byford attended her. I saw and met them there. I don't know how long that illness continued before she was able to leave; I should think between two and three weeks, if I recollect right. Prior to the time of her illness I was living at the Beaurivage flats. I did not stop at her house at all. When I reached the house the defendant was very ill indeed. She was delirious during her illness. I don't recollect whether she was delirious the first time I went there, but she was delirious on several occasions after that. I don't recollect who sent for me. When I got there she was not able to sit up at all and not able to write notes. She did not write any notes or send any written message asking me to come to the house then. I went there back and forth during her entire illness as much as I could leave my business. There were a great many others there. Mrs. Guthrie was there. She is an intimate friend of Mrs. Alexander's and resides at Columbus, Ohio. I think she came from Columbus here. She was the wife of J. C. Guthrie. They used to live in Chicago, and I understood were close neighbors of Mr. and Mrs. Alexander during his lifetime. I believe Mr. Guthrie was there during the defendant's illness, but not all the time.

There were other friends and acquaintances of the defendant's who called on her during her illness. I remember one night distinctly that Mrs. Walter Roloson was there all night. I was
287 there all night. Mrs. Studebaker was there; Mrs. Guthrie was there, and Mr. Lennebacher. I was informed by the physicians that she was so ill as to be in a critical condition. I can't recollect particularly how long a time she was delirious, but I should think she was so three or four days; five days, probably. At intervals Henry Kirtland was there. He was serving meals in the dining-room most of the time; there were so many people there.

I don't know of his acting as nurse at all for the defendant during her sickness. He might have come in the room while I was

there. I heard his evidence that he saw me lying on the bed beside Mrs. Alexander while she was convalescent. I did not do so at any time during her illness; never on earth.

During the time of her illness these ladies were there—Mrs. Guthrie and the friends of the defendant that were looking after her—and I was there with them. There was nothing of an improper character or nature occurred between me and Mrs. Alexander during that time; nothing whatever that would reflect upon the good character of either of us.

I heard the statement of Henry Kirtland about Mrs. Alexander addressing me in terms of endearment, saying that she loved me, and so on. I never heard any such statement from the defendant during her illness and never heard the defendant address me in that way. During her illness she did not at any time say that she loved me; never once. If she ever called my name during her delirium I never heard it. She did call Mr. Alexander's name on various occasions, the name of her dead husband.

I had a key given to me to the stable so that I could go through the stable into the house, and I did occasionally go in that way during that time. That rear entrance is as much or more used
288 than the front door and has been by visitors at the house, and they all know it, too. To reach the house when I came from down town, I would go down on the Wabash-avenue car, on the grip line, and get off and step across the alley right into the house. That is the most direct way. I never entered the house from the stable in the night-time; never on earth.

Mr. Henry lived on the south, adjoining the defendant's lot, and Mr. Bigelow on the north. The house where the defendant resides is what we call a block-house, one of the houses in a block. Mr. Bigelow's house adjoins it on the north, and next is Mr. Tuthill, and then comes Mr. Averill. There are four or five of these houses in a block built up together. There may be a space between Mr. Tuthill's house and Captain Averill's on the north. I don't recollect that. I didn't notice particularly. There is a space between the defendant's house and that of Mr. Henry on the south. It is not used for any purpose. It is a very narrow space. The fence on the north of the defendant's lot, separating these various door-yards, is a tight board fence, probably five feet high; I don't know as it is that much. The one on the south side is also a board fence. I don't know the character of the partition board fence further north. I never have been in there. There is no division fence between the defendant's lot and the others seven or eight feet high.

In coming through the stables, Marius, the coachman, was there at times, and often others were there. Going from the stable to the house I would be seen there more than I would be to go in the front door. I could not possibly go in and out there without the people living in all those houses seeing me. The dining-rooms in all those houses are on the second floor, so far as I know of my neighbors. They are all up above the fences and the fences would not obstruct the view in the least, and it is more public to go in that
289 way than if you came up in front. If I was going to try to

go into that house clandestinely I would not try to go through the stable, with all those gossips sitting around there. I do not want the jury to get the impression from what I have said that I always went in and out the back way. I did not.

The first time I ever went in that house I went in through the stable with Mr. Alexander to see the stock. I used to buy stock for him and I have sold him stock.

During those latter times, after the death of Mr. Alexander, I did not enter the house exclusively from the rear. I have been away down south and came up on the train and got off at 22nd St. and walked around the front way and went in. There was never the slightest concealment during my acquaintance with the defendant or my visits at her residence—not any more than there is to-day.

After her illness and she was convalescent she did go East. At the time she left home she was very weak and could hardly walk. I went with her; also Mrs. Wickersham. We went to the Oriental hotel, Long Island. We did not stop at any hotel before reaching there. There were quite a number of the acquaintances of the family there at the time. I remember that Mr. and Mrs. Sam. Turner, from Chicago, were there—Sam. Turner, formerly of the Grand Pacific hotel, and his wife. They were there during the time we were there, and we were with them every day. Sam. and I were together every day—that is, when I was there. I was not there all the time. I was in New York a great deal of the time. I had business East. I went down there to locate in business connected with the Metallic Packing Company. That was my principal business there.

Mrs. Wickersham is the lady that went with Mrs. Alexan-
290 der as her hair-dresser and attendant. She has been so connected with Mrs. Waldron ever since I have known her. Mrs. Wickersham must be fifty years of age. She has a family. I have seen one of her children. She went with the defendant when she went East and remained with her until she returned and occupied the same room with her at the hotel. My own was a room further down the hall. There were other Chicago people at that hotel; one gentleman that was keeping a carpet store and his wife—Mr. Judson. They were old acquaintances of the defendant and Mr. Alexander in his lifetime. Mrs. Alexander's sister and her husband and two children were there—two girls—from Springfield, Massachusetts. They came there to visit Mrs. Alexander and were there sometimes; and all these friends, the sister and husband and the sister's daughters, were there on a visit and afterwards we all returned to Chicago. There was no concealment about it on my part.

I heard the evidence of Marius, the coachman, and his statement about me returning from a drive and going through the stable into the basement with the defendant. I never, on any occasion, whether Marius was the coachman or any other person, went thro' the basement hall into the servants' dining-room and there embraced and kissed Mrs. Alexander. I heard his testimony. He says it occurred in the fall of 1886 and that he went in there to see the furnace. You would not necessarily have to pass through the servants' dining-room to get into the furnace-room. There is an outside entrance,

but they can go through that way. I have a diagram of those rooms in my hand. I prepared it. It shows the actual location of those rooms from actual measurements. It shows the entrance from the rear, from the stable, and the location of this dining-room and kitchen.

291 Coming from the stable to the house, the outside entrance would be the most direct way to reach the furnace. It is in the rear of the house and goes right under the kitchen. The furnace is under the kitchen. It is a lower part of the house. The furnace and coal bins and so on occupy that floor; pretty much all of that lowest floor; and the most direct way to reach that furnace-room from the stable would be from the outside entrance. It is not two-thirds as far as it is to go through the house.

(The diagram was offered in evidence and is as follows:)

292 There was no impropriety at any time, either in the presence of Henry Kirtland or of Marius, the coachman, or in the presence of any other person or without the presence of any other person, in any conduct between me and this defendant at her residence on Michigan avenue or elsewhere; never on earth.

I heard the evidence of O'Neil, the plumber or electrician. When I stai-d over night at that residence I occupied the guest room on the fourth floor. The front room adjoining that Mr. Lennebacher occupies permanently. The defendant occupied the room below me on the floor below. That would be what we call the second floor. It would be the third floor from the basement. I never occupied a room on that second floor over night—the floor above the parlor floor only during the time that she was dangerously ill. I stai-d then on that floor in that room. We all stai-d there. We sat up all night. I might have laid down on the lounge and slept there or slept in a chair; there were lots of easy chairs there. At the time Henry Kirtland was on the lounge in the adjoining room, the room spoken of as being the one Mr. Alexander used to occupy.

I am not acquainted with John O'Neil. I saw him once before he came into the court as a witness. I never saw him at the defendant's residence on Michigan avenue to know that he was O'Neil. I never passed through the hall in my night-shirt when he was working in the closet; never on earth. I never on that morning or any other when O'Neil or any other person was there came from either of the rooms on that floor and went back in the hall toward the bath-room. I don't remember of having gone to that house with the defendant and Mrs. Studebaker. I don't think I went into that house with the defendant in September, in 1887, at all. At that time I was in Montana hunting and fishing.

293 I was there pretty late in September. I don't know just when I did come back. I left for Montana, as near as I can recollect, on the 27th of August, 1887.

I did not either in August or September, 1887, or at any other time come to the house with the defendant from the train in a carriage, go up stairs with her and go into her room, which was on the

second floor, and lock the door. No such occurrence ever took place in the world. The closet and the batteries are located the same now as they were at that time. They have never been changed. There is one window in the hall and that is at the west end. That is the only means of lighting that hall. That window is twenty feet at least from the closet, possibly more than that, and that is a narrow hall and it goes east until passing the closet I mentioned, and then opposite the closet the hall widens out and is probably eight feet wide for twelve or fourteen feet long. The doors, one leading into what you might call into Mrs. Alexander's bed-room—it is a sitting-room—and the other into Mr. Alexander's bed-room, and this closet is an offset off of that main hall. The door opens from the east. The gas-*just* is east of the offset, between the two doors east of this offset. If the light from that gas-jet would be reflected in front of the closet door at all it would be very little. The occurrence he stated never took place in the world.

I did see O'Neil over at the Saint Cloud saloon and restaurant. I stood about as close to him as I could get in front of him. I heard what he was talking about. He did look at me and he was talking about me. He did not recognize me at all. If he did he did not say so; he kept on talking. I went in front *on* him and stood in front of him while he was carrying on the conversation. I didn't stay all the time while he was carrying on the conversation.

294 If I can tell the circumstances I can tell how I came to be there. I went into the Saint Cloud to get my lunch. I had a sandwich, and the proprietor made the remark to me and said: "There is a man in there, I think, wants to see you," and just then, "Here he comes." He said, "Here he is coming in the door with Mr. Dreyfuss." They, two, walked in up to the bar, and supposing they wanted to see me, I walked up and looked at him with my sandwich in my hand. I looked at him and discovered then that he was talking about my case, and I turned around and walked into the other room and sat down. If he had known me he would be apt to have shown it while I was standing there close to him. I never saw that man in our house in my life. I never saw him until I saw him in that saloon, and then again here.

I remember meeting the plaintiff in the Beaurivage in 1886. That was the first interview I had with her after I left La Fayette. The subjects of the interview or discussion at the Beaurivage at that time were various. Our affairs were the subject of the conversation. The subject of separation came up and was talked about distinctly, and I think the subject of the conveyance of the property came up. As near as I can recollect the manner of the conveyance and to whom the property should go was the subject of conversation. It had been, and I think it was then, because the ground was pretty generally gone over that night. I know there was a previous discussion as to whom the property should be conveyed in the case of a separation. That had been talked over on several occasions before I left La Fayette; that was in contemplation of a separation. I wanted the property left so my own son could get it, and I offered to deed it in trust to her for him, because I felt that Ed. Beauchamp

had all the money of mine he ought to have. In case I died, I felt he had enough. I felt he was not deserving of anything.
295 In case of the conveyance I insisted on its being conveyed in trust for her during her life and then to go to my own son. That was the point exactly. That was discussed and agreed on long before I left La Fayette. I think that same question was the subject of discussion at the Beaurivage. If I recollect correctly that interview was in July, 1886. My brother and his wife and Henry Kirtland were present at that interview.

I don't remember when I next had an interview with the plaintiff. I think I met her once at the Grand Pacific hotel about May, 1887. The subject of discussion then was about the same old story. I do not think there was any discussion about the conveyance of the property at that time. The interview was more with reference to getting me to return to La Fayette.

I know Robert Davie. I don't remember exactly when I first became acquainted with him. He was made my agent, after I left La Fayette and came to Chicago to locate, to look after my business. I had a good deal of property on hand. I had gone out of my stock-farm business and I had not sold my hay presses. He sold those hay presses, and there was some hay on hand. He sold that and the wheat on the farm, and he sold the stock for me, the horses and cattle and so on. I don't remember how long that agency continued; I don't remember exactly.

Coming down to the divorce proceedings between the plaintiff and myself at La Fayette, Indiana, the matter had been talked about a little for quite a while, and we could not come to a decision. Finally Mr. Davie came to Chicago and asked me if I was willing to transfer my property direct to Mary A. Waldron. I said if it would settle my difficulties I would. This was before the divorce proceeding. The divorce was granted in June, 1887, and it
296 was some time prior to that; I don't know just how long, but not a very great while, and he came to see me on that subject two or three times, and finally he wanted to know if, in addition to giving her all my property, all I had there, I would give my note for ten thousand dollars. I said, "Will that end it?" He said, "Yes; that will end it." I then agreed to do that. Afterwards the question of lawyers' bills came up, and there were a large number of bills there, and he wanted to know if I would pay all bills, and I told him I would pay every dollar. He came to me afterwards with a large lot of papers to be signed. There was a lot of those papers to be signed, and he was in a hurry to get them signed and to get back. I signed them and gave them to him. I had no interview with the plaintiff over that matter. I think the copy of the power of attorney in the record of the divorce proceeding is a copy of what I signed, and it constitutes Mr. Behm my attorney.

I have seen the original proposition signed by the plaintiff. I think that was among the papers brought to me by Mr. Davie at that time. I did not prepare that paper. I did not direct its preparation. I never saw or heard of it until it was brought to me to

sign. I suppose it is in accordance with the agreement or proposition submitted to me by Mr. Davie. I have not read it in detail.

I wrote to the plaintiff on that subject before this proposition was made to me by Mr. Davie; but that was the first time the proposition was put in shape and talked of in that shape. I did nothing about compelling the plaintiff to prosecute this proceeding for a divorce. I stopped paying bills after I had been in Chicago some time. It was some time in the summer or fall of 1886. My attorneys or somebody told me that as long as I paid their family
297 expenses I could not claim residenceship in Illinois; that I was supporting my family. I don't remember who told me that. It was not Mr. Walker or Mr. McCoy. My idea was that as long as I paid the bills and household expenses there, the claim of desertion could not be made. Long prior to my leaving La Fayette, and at the time of leaving La Fayette, this matter of a permanent separation was talked of and contemplated by me, and before I went to the Saint Nicholas hotel.

My action in that regard or the final consummation of this divorce proceeding was not in any manner prompted by this defendent, my present wife, in any shape, manner, or form. She did not advise it or aid me or influence me at all in that matter, never.

The proporty was conveyed to the plaintiff in accordance with the terms of that written proposition—all the property I had in La Fayette, real and personal. I brought away with me my old father and mother's family Bible and my wardrobe. I might have had a little money in my pocket, and that was all I brought away with me.

I heard the testimony of the plaintiff that I not only left her the property but the debts as well. There was no mortgage on any of the property except one of one thousand dollars or possibly two thousand dollars. I think, however, it was about a thousand dollars on the forty-seven-acre tract back of the homestead. That mortgage lien had been on it ever since I bought the property. That was part of the purchase-money of the property. There was also a mortgage on the four-acre tract—the tenant property. It was a tenant house belonging to the stock farm, and there was a mortgage on it for a small amount. There was four and a half acres of land. The house did not amount to a great deal. Those mortgages were on that property long before I left La Fayette, and the plaintiff knew about them at the time she made that proposition
298 which has been offered in evidence and read here.

It provides for the conveyance of the property and the execution of a note in lieu of alimony or in the place of alimony. The decree that has been offered in evidence here shows that a decree of ten thousand dollars for alimony was also entered. I did execute that note for ten thousand dollars to the plaintiff and conveyed to her all the property, and I discovered afterwards that a decree for ten thousand dollars alimony in addition to that had been entered. I discovered it when they sent me a copy of the decree.

I was not at La Fayette during those proceedings. I have been there but once since I left there in May or June, 1886, and that was

last winter. I went down with Mr. McCoy when he was taking depositions in this case.

I had no knowledge about the evidence that was to be offered in support of the plaintiff's petition there for a divorce. I did not see the petition that was filed there and had no knowledge of its contents or of the charges that were made in it. I had no knowledge and had not been advised by any person or party that any charge would be made except desertion and cruelty. It was understood distinctly that would be the charge.

(The witness is shown a paper, which he identifies as one that was sent to him immediately after the decree of divorce was entered.)

Said paper is offered in evidence by counsel for the defendant and is as follows:

Copy of Divorce Decree Sent Edward H. Waldron.

THE STATE OF INDIANA, } ss:
Tippecanoe County, }

In the Superior Court of Tippecanoe County to May Term, A. D. 1887, Tuesday, the 32d Judicial Day of Said Term, June 299 21st, 1887.

Present: The Honorable John M. La Rue, sole judge of said court.

MARY A. WALDRON } 4509. Divorce.
vs.
EDWARD H. WALDRON. }

Comes now the plaintiff, Mary A. Waldron, in proper person and by William C. Wilson, her attorney, and said plaintiff now files the summons heretofore issued to said defendant in this behalf, with the written waiver of the defendant thereon and his written consent to the immediate hearing of this cause; which summons, with the written waiver and consent therein endorsed, reads as follows, to wit: (insert); and comes now A. Orth Behm and produces to the court a power of attorney from said defendant to him authorizing him, the said Behm, to appear in open court in the superior court of Tippecanoe county and enter his appearance herein and consent to an immediate trial of this cause; which power of attorney is in the words and figures following, to wit: (insert); and said Behm now in open court enters the appearance of said Edward H. Waldron in this cause and consents to an immediate trial thereof.

And said defendant now files his answer herein, which reads as follows, to wit: (insert); and this cause now for trial is submitted to the court without the intervention of a jury.

And the court, being sufficiently advised in the premises, finds that the plaintiff is entitled to a divorce from the defendant on account of his misconduct as charged in the complaint herein.

It is therefore ordered, adjudged, and decreed by the court that the bonds of matrimony now existing between the plaintiff,
300 Mary A. Waldron, and the defendant, Edward H. Waldron, be, and the same hereby are, set aside and annulled, and the plaintiff is awarded the care and custody of her infant son, Williard W. Waldron, until the further order of the court herein.

It is further ordered, adjudged, and decreed by the court that said plaintiff do have and recover *off* and from said defendant the sum of ten thousand dollars ($10,000.00), collectible without relief from valuation or appraisement laws, as and for alimony in this behalf.

It is further ordered by the court that the plaintiff recover *off* and from the defendant the costs and charges herein.

THE STATE OF INDIANA, } *sct:*
Tippecanoe County, }

I, Henry C. Tinney, clerk of the superior court of Tippecanoe county, Indiana, do hereby certify that the above and foregoing is a full, true, and complete copy of all proceedings had and judgment rendered in the above-entitled cause in said court, on file and of record in my office.

Seal Indiana Superior Court of Tippecanoe County.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at office in La Fayette, Indiana, this the 21st day of June, A. D. 1887.

HENRY C. TINNEY, *Clerk.*
W. W. BURROUGHS, *Deputy.*

301 When this paper was sent to me I read it through and put it away. I glanced through it and saw what it was. This was the first notice I had of the entry of a decree in La Fayette, and is the only paper that was sent to me. It was sent after the execution of the deeds and note and the assignment of the life insurance policy and everything called for in the proposition.

I don't know who prepared those papers, or whether it was
302 her attorney or not. They were brought to me by Mr. Davie personally, and I executed them and sent them back. I sent no money there, except as it was represented to me that the amount would be necessary in accordance with the terms of that written proposition. There was no list furnished me of the bills or the amount of fees that were to be paid.

So far as I have any knowledge of it, that divorce proceeding at La Fayette was instituted by the plaintiff and carried out in accordance with the terms of her written proposition, excepting the alimony part. Mr. Davie coming here with all those papers was the culmination of the conversations that Mr. Davie and I had on this subject at different times. Finally he brought all these papers up here for me to sign. He said if I did that and executed my note for ten thousand dollars all my unpleasant embarrassments would be ended, and I signed the papers and gave them to him.

By the COURT:

Q. This judgement for ten thousand dollars alimony, was that in addition to what you agreed to pay?

A. When I read that in the paper sent me I understood it was to cover the ten-thousand-dollar note.

By Mr. WALKER:

Q. I see there is still left in the record of the divorce proceeding that was read to the jury the charge that you became enamored of one Josephine P. Alexander. Were you advised that such a charge was to be made?

A. No, sir; I never was or I never would have let it gone in. No intimation of that sort had ever come to my knowledge; not the slightest.

The COURT:

Q. You did not know what was in this complaint or bill until this decree was entered?

A. No, sir. I did not learn of those charges until after this suit was brought. I read it in the newspapers when this suit was brought. I did not know of it before that time. I had no
303 knowledge of those charges connecting Mrs. Alexander's name with these divorce proceedings until I learned it by reading the newspapers after this suit was brought. I don't know when that was. My conduct in that matter was never either directly or indirectly influenced in any way by this defendent. It was never a matter of discussion between us, and the details of it were never a matter of conversation. I don't think there was much of anything said about it until after I had seen these papers. Then I said to the defendant, "I thought I had got pretty near through." I had seen the papers. There had been some changes. Mr. Davie had been to me and each time added on something, and I thought the ten thousand dollars would end it. I have not exercised any control or ownership over the property I conveyed to the plaintiff since the time of those conveyances. I have not been in receipt of any rents or income derived from that property since that time.

I was married to my present wife on the 25th of October, 1887. That marriage was first proposed by me to the defendant just before I went to Montana; I think I started there on the 27th of August. Prior to that time the matter was never referred to or discussed between us at all, and there was no understanding or agreement between me and this defendant that a divorce should be procured either on my own petition or the plaintiff's petition, either in La Fayette or elsewhere, and afterwards a marriage between us.

Q. I will put the question direct to you, Mr. Waldron: It is charged in the bill that the defendant debauched you. I don't know just what that means, but you may state whether the defendant has influenced your action towards your wife, the plaintiff, in any possible way.

A. Not in the slightest degree.

Q. The declaration also charges carnal knowledge before
304 your marriage with the defendant. Is that true?

A. It is not true; it is a lie.

Q. To sum it all up, state whether or not, during your acquaintance with the defendant, and after the death of her husband, Mr. Alexander, and during all the time prior to the divorce, whether your relations with the defendant were of a proper character, such as might be between two friends, one being a man and the other a woman. State whether there was any impropriety of conduct or expression.

A. Not in the slightest.

The defendant gave me a ring on my birthday following my marriage with her, but never gave me a ring of any kind until after our marriage.

The plaintiff had no property that I know of at the time I married her, except her millinary store. In the spring and fall when the extra goods were laid in, the value of that would be increased to run it up to a few hundred dollars. I never received from her any part of her estate in any business that I was engaged in, and none of it entered into this property that I conveyed to her at the time of the separation.

Cross-examination.

By Mr. ALDRICH, for the plaintiff:

I never was engaged to be married to the plaintiff in the world, and prior to the time we left for the East, when we were married, there was no attachment between us. The engagement, if it can be called an engagement, occurred on Saturday and we were married on Sunday. The subject of marriage was mentioned between us on Saturday morning, and we were married Sunday evening, the next day. We had not contemplated marriage prior to the time, and there had been no conversation whatever on that subject. I
305 had neither formed nor expressed an attachment for her prior to that time. I don't know about her, but she had expressed no attachment for me. The marriage surprised me a good deal afterwards. The truth of the matter is, I found myself married before I really recognized what position I was in, and it was decidedly against my will. I have never been at all pleased with the situation in which I found myself. It would be a pretty difficult matter to tell how I felt at that time. I was not pleased.

I did not so express myself to anybody at that time. I felt that I had got in a box and had been imposed upon. When I was married I was just the age of my son now—twenty-one years old—and I had about as much beard as he has. I hadn't had a great many years of experience in the world at that time. I was cashier of the New Albany road at La Fayette and drawing a salary of eighteen hundred dollars a year. I feel very positive about the relations between myself and the plaintiff at that time. It is very distinct in my recollection.

(Witness is shown a letter which he identifies as being in his handwriting, bearing date September 15th, 1865, addressed to Virgil Russel, a brother of the plaintiff.) The letter *id* offered in evidence by counsel for the plaintiff and is as follows:

"SYRACUSE, FRIDAY EVENING, *Sept. 15th*, 1865.

FRIEND RUSSEL: It is so dark I can hardly see, but the day has been one of importance to me, and I could not withstand the temptation to write. The importance I mentioned is that 'Mate' and I have concluded to 'hitch." We are to be married Sunday night at the residence of your uncle, and shall start home by first train Monday.

I hope it will be received by you and your mother as well as it is by my folks. Father and mother are rejoiced beyond
306 measure, and I seriously hope you will all be pleased by the union; we have arrived at the conclusion that life would be nearly worthless to both of us if we were to separate, and have come to the conclusion to get married this winter; but since we have been here we concluded we might as well have it settled at once and have it over with as well as to wait six months or a year. I have never spoken to you or your mother about it, for I didn't anticipate it would come of so soon. I thought I would have seen time to broach the subject after we returned; but this world is full of changes and I consider this as being a very important one in my history. I am sure it is for the best that I should get married, especially to Mary; we have lived under the same roof so long that I think it would be next to impossible for me to leave, and I think you would rather hate to see me; you must not consider that any change is to take place in our domestic affairs; as long as I have a home I want you and your mother to consider it as *you* yours, and won't actually have any change from what we have been. I want to live just as we have, only you will have to give me up *a* as a bed-fellow. I hope Charley looks at the thing in a favorabl- light and will be perfectly satisfied with the change. I think from the fact of our having lived together so long that we can continue to do so and can lead a joyous and happy life. I want you to stay with us and not feel that you are rooted out or that you are not loved as much as ever; we will do all we can to make it comfortable and perfectly agreeable as long as you will remain; Charley, too, must remain with us and must consider himself at home; in fact, things must go on as they have and all unite in making it a cheerful and happy household. I hope you are satisfied in giving me your sister and do not feel you are giving her to one you know not of, but to one who is worthy of her.
307 I know I am not worthy of her, but I shall strive hard to improve myself and shall do all in my power to make her happy and contented in her choice.

Hoping this step of ours will meet your entire approbation, I remain your true friend and accepted brother-in-law,

ED. H. WALDRON.

(Slip enclosed:) You have seen Mrs. Beauchamp for the last time. Prepare yourself to receive Mr. and Mrs. E. H. Waldron."

Virgil Russel, to whom this envelope is addressed, is a brother of the plaintiff. He was engaged in the same railway I was and we had been rooming together prior to the time we went East. We returned to La Fayette and lived with the family, as I had anticipated in the letter, for some time. I don't remember how long it was before the brother, Virgil Russel, left that household. I think the Charles mentioned in the letter was my brother. He was also there at the time. I would not be sure whether he was living in the same family. He was there, I think.

I remember a good deal about it. I don't know how long Charles stayed or Virgil either. I think he stayed until he was married, some time after. Mrs. Beauchamp at that time was living on Ferry street, and she was considered the head of the house. She had her boy with her, and he lived there all the time I was boarding there. I never knew what his age was, but I should think he was seven or eight years old at that time. I mingled in the society of the family when I was boarding there. There might have been one or two of their friends came there that I met. I don't remember
308 who they were. I don't remember going out in society with any of the family at all. I did not go out in society myself during that period. I was acquainted with very few people in La Fayette. There were a great many young men there, but I didn't know many of them. I was not acquainted much outside of the railroad men—scarcely any.

Virgil Russel never told me about his sister's divorce. I am sure he did not. I don't remember of his speaking to me of the marriage in any way, shape, or form, and he did not tell me of her divorce. He never told me of her divorce. The first I knew of her divorce was when the sheriff presented me a bill for the costs in February or along about that time, after we were married, and it made some family contention then. There was hard feelings about it. I had not loved my wife prior to that time. I had no more respect for her than I would have for any woman under just those circumstances. I had made up my mind to do certain things—to live with this woman, and, so far as that went, to respect her to that extent—and from that time on I never had any great love for her. I had the respect that I was living with this woman righ- along, and we led a life of contention and trouble nearly all the time. It was only occasionally that we would have any words. Something would come up that we would have some words over and that grew.

We had words as early as February, 1866, when this bill for costs came up. The matter was discussed and talked about at the time and then dropped. I don't think it was ever referred to again. I never have had with the plaintiff what I now know to be a happy married life. There was always a cloud there from the Sunday evening that we were married. There were times when it was a pleasant home. It was not all unpleasant. It was not a quarrel all the time for twenty-two years.

309 Mrs. Waldron did not take about one thousand dollars out of her millinery business the first year and contribut- it toward our joint enterprises. I did buy some property on a street there on which we subsequently moved, and the first payment was made on that with her piano. It was whatever the piano came to. I have forgotten now. The title was taken in her name and always remained so. There are two houses on this property, one of which we lived in. The other house I built some time after that. The brick house was not on the land at the time I bought it. They are the two houses she refers to, the one renting for $17 and the other for $13 a month.

All the information I remember to have received about Beauchamp, the divorced husband, visiting the house I received from the plaintiff. We went to St. Louis in 1875 and were there about two years, and then returned and built the new brick house for a home. I don't wish to be understood as saying that the plaintiff encouraged her former husband's return.

Ed. Beauchamp or Ed. Waldron, whatever name he went by, was a bad boy. I think I first forbid him the house about in 1878 or 1879; somewhere along there. It was after he had returned from the Illinois State prison at Chester, whenever that was. I don't know whether my wife acquiesced in that course. I don't think she refused to at the time. He was always in trouble and need. I don't know whether it was a case of her seeking opportunities to furnish him money and clothes and aid or simply not being able to refuse appeals of a son made to her. I simply know it was done. She did it, and I felt very angry at it, after I had so many times and during so many years tried to stop it, and that made domestic difficulties. We quarrelled a good deal about that on sev-

310 eral occasions. We had a good deal of trouble about that after the completion of the "Kankakee line," which I built, and things got pretty bitter after awhile after that because he was constantly in trouble. Even if it had not been for his troubles we would not have been happy. She was jealous of me all the while and throwing that up to me. At that time I was away from home building this road. If it had not been for Ed. Beauchamp we would probably have got along with less friction, but he was not the only source of friction.

She was a careful and economical housekeeper during this period—neat, as a housekeeper.

I don't know that I have ever been addicted to the use of intoxicating liquors to excess. I have drank whiskey all my life. What might be excess to one might not be excess to another. I drank more along in 1883 and 1884 than I ever did before or since.

In speaking about the matter of endorsing Ed. Beauchamp in anything bad he did I don't mean she did it for the purpose of encouraging him in vicious habits, but her manner of treating the boy led him into vicious habits right straight along. That is what I found fault about. I did not think he should be compelled to seek his own support when he was at school, but thought he ought to be compelled to go to school and to mind, neither of which he

did to any extent at all, and that was a source of trouble between us. I think if the boy had been treated as he ought to have been he would have been a different boy from what he was, and I tried to get her to do that, and the failing or refusing to do so was one of the reasons he was as bad as he was. She knew he was stealing and she encouraged him in this way. When he took my things out of the house she would allow him, after he had done
311 so, to come back and take them again. That is what I mean by allowing the very same thing to be repeated over again. It may have been the case that he was incorrigible and beyond her or my control.

In my testimony describing the home property what I meany to state was that the homestead cost me, as I left it when building, twenty to twenty-two thousand dollars. I think I stated twenty-two thousand dollars. I stated that the ground cost about thirty-six hundred dollars, but I did not mean to put the land in as an additional cost of the property. I did not mean the property would pay, by virtue of rent, an income on that investment. It has never been an expensive property to keep up. The grounds were the greatest expense. The house is large and somewhat expensive if servants were to maintain it. I don't doubt but that in my letters to Winnie in October, 1886, I urged upon them to get out of the property on the ground of its expense. I wanted to stop the expense and have them go into less expensive quarters. For the little family they had there it was an expensive property—too expensive for them to keep up.

By Mr. WALKER, for the defendant: This examination is not in rebuttal of anything I drew out. I am objecting to their proving the contents of letters which they identify and mark but do not offer in evidence. I want to get at those letters, and I object to their proving the contents of them in this way.

The COURT: Of course they can't prove the contents of the letters if the contents of the letters are to be shown, but they are merely showing what he did for the purpose of showing in regard to that property. The evidence is all right enough so far.

I don't remember whether the fee bill for costs in the divorce case was paid by the plaintiff or myself. At that time the receipts from her millinery business and my salary went into a com-
312 mon fund, from which all expenses were paid; the only books in my department of the railroad where I was employed I kept myself. I was the cashier there and my salary was $1,800 a year. My salary would not be entered upon my books; nothing would go on them showing what my salary was; it came from the pay car, from the general office at New Albany; if my memory is correct, I commenced for that road at $1,800 a year, and left the Ohio and Mississippi road at Cincinnati to go there at an increased salary. I got a good salary before that; before going to La Fayette at all I had been at work at Cincinnati for the Ohio & Mississippi railroad. I was through-bill clerk; then I was brakeman on a freight train, and I had charge of the yards at Cincinnati; there I

met with an accident and I went back into the office; prior to going to La Fayette I had been between three and four years in railroad employment, I think.

The homestead at La Fayette is situated in the suburbs and is accessible part of the way by street car.

I think there was a mortgage of a thousand dollars or it might have been two thousand dollars on the 47-acre tract, and there was a mortgage of one thousand dollars, I think, on the four and a half acre tract I conveyed to the plaintiff; when the property was sold it didn't sell for enough to pay off the indebtedness; it had run on quite awhile before it was sold. I don't know that the total amount of the indebtedness was as much as three thousand dollars. I don't recollect the amount. I remember the four and a half acre tract I paid twenty-five hundred dollars for, if my memory serves me right, and it was sold afterward for a little more than one-third; the costs
313 that had accrued and the expenses of the sale added to the loss, which made part of the claim that went over onto the homestead. I do not know that there was a deficiency decree of two thousand dollars which went over onto the homestead; it all occurred after I left La Fayette, and I had no report on that subject any further than they told me there was an unpaid sum that went over on the homestead.

I built the homestead house in 1877 or 1878, and it was not a great while after that I commenced additions to the property by purchases of other pieces of ground. I bought the additions to the property at different times. I think in 1879 or 1880 I built my stock barns, and later I added another piece. The last addition I made to that piece of property I think was the four and a half acre tract. I think that was the last addition, and it was made in 1881, I think. After that I bought a farm on what they call the Mayflower road. It was adjoining the fancy stock farm, and was known as the Mayflower park property. I don't remember how many acres there were, but I think it was a quarter section. I think I purchased it the season following the purchase of the four and a half acre tract.

I left the railroad company because of family troubles. My wife went to the general office of the road and made complaints. The name of that general officer is Columbus R. Cummings. I don't say that her going to him and complaining was the cause of my discharge, but I said she went to him and found fault, and it was through that and the fact of her going to my office at La Fayette and keeping me in hot water that I finally gave up my position. I came to Chicago and told Mr. Cummings personally I would not stay any longer with the road. My wife's complaints to Mr. Cummings were a part of the cause of my leaving. I only know she
314 was to Mr. Cummings by hearsay. I was not present myself. Mr. Cummings never told me directly. He told an intimate friend of mine it occurred. Mr. Thomas L. Brannan was the friend he told.

It was the latter part of 1884 or the early part of 1885 that I first

left home to stay, and I was at the St. Nicholas hotel about seven months, and returned in September, 1885.

I was not insensible at the time I was carried home after my leg was broken. I knew I was going home when they carried me out. I objected to going home before we started to various people in the room. My wife and son were not there. I did not tell my son I wanted to go home, and I don't think I asked anybody to take me. I didn't want to go, or I should not have gone to the St. Nicholas hotel from the Lahr house after my leg was broken. It is not a fact that I was in a drunken condition when my leg was broken, or that I did not know where I was going when they took me to the hotel. I had taken a drink just before I broke my leg, and that was the only drink I had had that whole day.

My wife attended me while I was suffering with the broken limb. I didn't make any complaints of her attentions.

When I came to Chicago in June, 1886, I never intended to return. I never caused to be inserted in the La Fayette papers a notice to the effect that my business only took me to Chicago for a part of the week, and I had no intention of leaving La Fayette. Mr. Davie at that time was not my agent. He did not take charge of my affairs until after I came to Chicago. When I first came here, the first two or three weeks I was here in Chicago, I had a large amount of stuff on hands in the Eastern markets, and I had some men to pay in La Fayette, and I told them I would come back the latter part of the week, Friday or Saturday, when I came to settle up with them, so they could keep going to wind up the business.

I did not cause any notice to that effect to be published. I
315 told my men, and that was all.

I think I went to Omaha somewhere about the time I went to the St. Nicholas hotel. I think I went out through the West at that time. I came through Chicago or returned through Chicago, and I think I met Mr. Alexander on that occasion. I was not at his house on that occasion. I do not know how often during the last two years prior to my coming to Chicago permanently I was in this city. I was not here frequently from 1883 to 1886, the time I was giving my attention to my hay business and stock farm. My business did not call me here, and I did not come here very often at that time. It might have been as often as once in two or three months, but I hardly think it was. My business then called me in other directions and not so much here. When I was in Chicago I would generally meet Mr. Alexander.

I had been on terms of intimacy with his family for a great many years, and when here in Chicago he had me as a guest at his house. It is not true that I discontinued this practice during the last two or three years. I did not go to his house because I was not here; I did not see him as frequently as before. I would not say I saw him once a year, because I was not here very much. I would be willing to say, I think, that I did not see him twice in the three years, except the time I took this trip in the West; when I came back here from St. Louis, I stopped, or else I stopped as I went West; I have forgotten which. I called on him.

This arrangement about the Tolleston stock farm was commenced before Mr. Alexander's death. It might have been in the latter part of November or December. It was in the early part of December. It was made at Tolleston, at the farm. I came to
316 Chicago on that occasion. I was not a guest at that time, and was not a guest at the house at the time I went to Omaha. I went to Mr. Alexander to see about disposing of some stock he had on the farm.

During Mr. Alexander's absence in Louisville in February, 1886, I did not receive any telegrams from Mrs. Alexander to come to Chicago. I did not come to Chicago during his absence in Louisville. I went East to see Mr. Jewett on Saturday, the 20th day of February. I was not in Chicago from the 6th of February up to Saturday, the 20th of February. If my memory serves me right I had a cattle sale at Indianapolis during that interval.

I think I went to the Beaurivage flats in June, 1886. I could not tell what time in June. I had stopped at the Grand Pacific hotel quite awhile even before I came here permanently in June. Mrs. Forsyth kept those apartments. I don't recollect how long I occupied them. I have not anything with me from which I could refresh my recollection. I have two or three different offices, and my books are scattered around among them. I presume the stubs of my check book would show the time I left there. I paid nearly all of my bills by checks. I don't recollect when it was I left the Beaurivage flats. Henry might have packed up my things for me when I left there, but I cannot remember when that occurred. My impression is it was some time after this interview of the 8th of July, because I don't think I saw the Forsyth sisters for some little time after that. My impression is I did not have my things packed up and leave there until I went East—I think in August—and I occupied the apartments off and on there up to the time I left permanently and took my things away. I was not there after the trip East.

317 I believe Mrs. Alexander was well up to about the 15th of July. She had not been ailing prior to that time that my attention had been called to, and I think she was sick from that time up to the time she went East in the first part of August. I think the rides we took together was while I was at the Beaurivage flats.

Aside from the trip East in August, 1886, I believe I did take another trip East with Mrs. Alexander before we were married. I don't recollect what time it was. I don't think we were anywhere but direct to New York and return. I stopped at the Hoffman house in New York.

Charles P. Howe went with me to Montana. He was a resident of Chicago at that time. I think he resides in Milwaukee now. We went by the Pacific road. I went alone from here, and left, I think, the 27th of August. It might possibly have been the 25th, but it was late in August. I fix the date because I made an important contract just at that time, and I remember the contract was made about the same date, and I waited a day or two to fix that up, and

then left, and that was sometime between the 25th and 30th, and my impression is that it was about the 27th of August. I have no means of fixing the date of my return. I was back quite awhile before we were married. I think it took me four or five days to go to where I went to and four or five days to return, and then I hunted and fished there several days and looked at some mining property. I might have got back by the middle of September. I don't recollect the date. I think I met my son Winnie here when I returned. I think Mrs. Alexander met me at the depot on my return. I don't recollect who the driver was or whether it was a carriage of her own or a livery carriage.

The plaintiff sent the papers to me covering the convey-
318 ances made by me to her at the time of the divorce proceedings. I had been urging a separation for three years. The papers that came to me came from Mr. Davie. I could not say whether the written proposition sent to me was in the handwriting of Mr. Behm or Mr. Davie. Mr. Davie was here about the time this thing commenced on an average once a week, and I guess sometimes twice, before these papers were finally brought to me. I could not tell how many times.

I might have made substantially that proposition as early as the 9th day of October, 1886. I did not give notice about that time that it was in the hands of third parties to settle. I don't think I ever heard the term "third party" used but once in connection with the case. I don't remember of ever using that term. Mr. Davie came here several times after I left La Fayette to see me in regard to my business. I cannot designate between the times. As I told you, a short time or some time before those papers came to me Mr. Davie came to me and wanted to know if I would do certain things in regard to a separation from my wife. I have known him to be here twice a week, but I don't know that he brought up this subject at each of his visits. He might have come here about some of my other business matters, but this came up in these intervals, and this matter was under discussion for some time. I have been urging a divorce for three years. I don't know as I was doing it particularly during this period. I know I was desiring a divorce for three years, and there was nothing in the interval to change my mind in the least. I didn't see the plaintiff. I don't know whether she was objecting to it or not. I was trying to get her to save the property down there, and they were frittering it away through their hands. I wanted her to get a divorce instead of me

bringing a suit against her for it. Mr. Davie came here to
319 see me in connection with the matter. I might have made threats in connection with her getting a divorce. I don't know what of Davie's expenses they may have paid down there. I paid his expenses a great many times in my settlements with him. I might have been absent from home at that time about a year. If I made threats to my wife I must have been cruel to her. I didn't treat her to any personal violence in that interval. I never used any personal violence toward her.

I did not know that Mr. Davie testified on the trial of that case

about an improper intimacy with Mrs. Alexander on my part. I didn't know a single thing about the testimony to be introduced there. I don't think I saw Mr. Davie for several days after the decree of divorce was entered. I am very certain I did not. I could not state the date. I don't think he left La Fayette the day the decree was entered and met me here in Chicago that night. I won't say he did not, but I don't think he did. My remembrance is it was some time after that, because at that time I wanted a settlement with Mr. Davie as to my other business affairs, and insisted upon having it, and my impression is it was some days after the decree came to me before Mr. Davie came at all.

Before the divorce he brought me several papers concerning the transfer of this property to her. He brought deeds, the life insurance policy, a power of attorney for Mr. Behm, and I can't remember what all—a lot of papers—an agreement on my part to pay all her debts. That was about the 6th of June, before the decree of divorce.

When he came after the divorce I don't remember that he brought me anything. I think the note for ten thousand dollars to Mrs. Waldron was among the papers that he brought me about the 6th of June before the divorce. The note was made out down there for me to sign the same as all the papers were, and I signed them all at that time and gave them to him.

The witness is shown a letter which he identifies as in Robert Davie's handwriting. It is dated the 22nd, but the witness is unable to tell the month of its date. Counsel for the plaintiff offered the letter and post-mark in evidence.

Counsel for the defendant objected to the introduction of said letter in evidence on the ground that it was incompetent, irrelevant, and immaterial, and because the agency of Davie at the time the letter was written was not established.

The COURT: I don't think it ought to be received in evidence as absolute evidence of the facts stated in the letter, but only as a circumstance in the case in connection with the testimony of the witness. There is no evidence showing he had authority to bind Mr. Waldron in regard to the matters stated.

Thereupon the court overruled said objection.

Said letter as read in evidence by counsel for the plaintiff read as follows:

GRAND PACIFIC HOTEL, CHICAGO, *6th*, *22nd*, 1887.

DEAR MRS. WALDRON: I am to-day making final arrangements of your matters with Mr. Waldron. After much talk he has consented to pay for the repairs to your home property so far as you have already had bills, namely, Garland and Lease; also for groceries, etc. The taxes were due and unpaid; he will also pay that. But the $120 of borrowed money he declines to entertain. However, I hope I can before long get him to pay that also. At any rate I will do the best I can. I paid many bills before leaving, and

will pay the balance when I return to-morrow. I will show
321 you the receipts before sending them to him. If you wish to see me about anything drop me a note and I will call on you.

Yours, etc.,

ROBERT DAVIE.

P. S.—He will also pay Winnie's bills to the extent of $35.

Mr. WALKER, for the defendant: Does not that letter show that Mr. Davie was representing the plaintiff?

Mr. ALDRICH, for the plaintiff: That is a question to be argued.

(Witness resumes:) I had opened my office and done business prior to the time I went East with Mrs. Alexander in 1886. The office was in the Adams' Express building, I think, on the third floor. Henry commenced work for me immediately on opening the office. The date has been fixed here. I don't remember just when it was, whether May or June. It was in the spring of 1886. I don't think Henry Kirtland continued to work for me until September 27th, 1887. I can't recollect when he did leave me, but he worked for me a few months along in the summer. I was absent in August, I think. I don't remember just how long I was East with Mrs. Alexander. I think we were East two or three weeks; I think not longer than three weeks. I don't remember just when I came back. I don't know when Marius Casparson quit working for Mrs. Alexander; it was before cold weather of 1887. He quit before we were married. It was after our return from the East and after my return from Montana. I can't recollect who the driver was of the carriage that met us on our return. Mr. Howe and I and some parties with us came out and I stepped into the carriage, and I paid no attention to the driver at all. I could not tell whether it was a livery carriage or a private carriage.

322 I do not think any one was with Mrs. Alexander that morning when she met us.

Mr. Dreyfuss worked for me a short time. It was not at my instigation or request that he called to see O'Neil and Casparson. I did not direct him to go, nor any one for me that I know of; and I have not advised nor consulted with anybody about his going or about anybody else going. It was entirely unpremeditated, my being in the St. Cloud saloon at the time I met him there. I had no idea of it, and did not know O'Neil and Mr. Dreyfuss had been to Mr. Walker's office. So far as I am concerned I know nothing of it whatever.

Nothing improper ever occurred between me and Mrs. Alexander prior to the time of our marriage. I never drove into the barn there in the evening after dark in the world. I knew Marius Casparson's wife. Mrs. Alexander never kissed me in her presence.

Redirect examination.

By Mr. WALKER:

At the time I went east in 1887 and stopped at the Hoffman house Mrs. Wickersham was with the party; also Mr. Brant C.

Walker, son of Mr. Walker, attorney for the defendant, and his wife. They were there on their wedding trip. It was sometime in the summer of 1887. Mrs. Wickersham occupied the room with Mrs. Alexander. My room was down the stairs and around the corner, about thirty feet, I should say, from that room. I do not recollect how long we were there—several days, possibly a week.

At the time I returned from Montana the defendant met me at the depot and we returned to the house. I do not remember what hour of the morning it was, anywhere from seven to nine
323 o'clock. I did not breakfast at the residence that morning. We had breakfast on the dining car on the road. That was after the divorce was granted. The divorce was granted in June and this was some time in September, and was after my engagement of marriage with the defendant.

As near as I can remember the written proposition of the plaintiff to me relative to the divorce may possibly have come to me first with some of the papers Mr. Davie brought me first that were in the nature of a proposition in regard to the payments of some debts and something else. The paper is dated June 11th, 1887. I am pretty sure that paper was brought to me at the same time the other papers were brought to me for execution. I could not testify just what papers did come. There were a good many of them and Mr. Davie was in a hurry to take the train back. He brought the papers over and I signed them—all of them. Before I saw that written proposition signed by Mrs. Waldron all the details had come to me verbally through Mr. Davie, and I understood that was merely reducing to writing the agreement or proposition that had before that been made to me.

As to the first property we purchased in La Fayette, the title of which ran to the plaintiff, and for which her piano was used in payment of part of the purchase-money, I have forgotten what the first payment was. We bought the property and were to pay for it in three or four payments, and in making up the first payment the piano was put in, and if I am not mistaken I put in a little money also to make the first payment. I do not remember how much we afterwards paid on that property. I think the original price paid for the house was four thousand dollars; it might have been
324 a little more. I don't think it was any less than that. The title remained in the plaintiff, and does yet, so far as I know. I built another house on the rear end of the lot, on the other street; the house stands on the corner and on the rear of the lot I built the brick afterwards, fronting on the other street.

At the time these papers were executed, immediately preceding the decree for divorce, all the personal property we had was conveyed by bill of sale to the plaintiff. The house was well furnished all through; that all went, and there was some stock; I don't remember how much; there were some Jersey cows; there was one carriage, and she had a phaeton and a horse of her own. Everything that was there was conveyed to her.

After I returned from the East, immediately following the defendant's illness, in the fall of 1886, I don't think I went back to the

Beaurivage. I think I went to the Grand Pacific hotel. I don't know that I remained at the defendant's residence at all after I returned from the East. As nearly as I remember I went to the Grand Pacific hotel. I never charged my mind particularly with those things. I was there all through the wheat panic that occurred that year. I was there in May. After my return from Montana, and after my engagement of marriage, I think I stopped at the house on Michigan avenue.

I never saw the letter which was read here, written by Mr. Davie to the plaintiff in June, 1887, before it was read here, and never heard of it before in my life. I did not direct the letter to be written; and, after hearing it read, I still can't help but think yet it was several days after the 21st of June, after I got that decree of divorce, that I saw Mr. Davie. He might have been in Chicago.

325 I remember of him coming here to persuade me to pay other debts or bills not enumerated in the proposition. That is the reason it seems to me it was the same with that. He said he came for Mrs. Waldron, the plaintiff. She thought I ought to pay the bills. They found a good many bills, and he came to me to urge me to see if I would not pay them, and I did pay them.

Testimony of John Wilson.

Called on behalf of the defendant and examined by Mr. WALKER:

My name is John Wilson. I am coachman for Mrs. E. H. Waldron, at number 2028 Michigan avenue. I have worked for her since the 11th day of August, 1887. Prior to my going there Marius Casparson was the coachman for Mrs. Waldron. I have known him by sight ever since I went to work for Mrs. Alexander, now Mrs. Waldron, and have known him since, but not very personally. He has been to see me a couple of times in the stable after he left.

While there one evening he talked with me about this case. I think it was after he came back from Liverpool.

After he left Mrs. Alexander he bought a scavenger wagon, and then he sold it out, and I think he went to Liverpool, England, after he sold it out. That was what he said. He was driving a cab there at one time before ever he came to this country at all, and he went back to take a cab again. At the time of calling on me he talked of Mr. Waldron also, and he said he would get even with Mr. Waldron for discharging him.

At the same time in the same conversation he stated to me that there had been two thousand dollars raised to pay for the
326 testimony in this case; that he had gotten five hundred dollars of it, on which he went to Liverpool. He said Henry Kirtland was to get five hundred dollars. The two thousand dollars was to be divided among four people. I asked him who the other two were. He said they were two people in La Fayette.

He said he had received his five hundred dollars, and Henry was to receive five hundred dollars, and the other two sums of five hundred dollars each were to go to people at La Fayette—two wit-

nesses—but he would not tell me who they were; perhaps he didn't know.

I remember of Mr. Waldron going west to Montana after I went there to drive. I remember when he returned from Montana. I met him at the depot. I can't say when it was. I do not remember how long he was gone to Montana; I know it was quite awhile.

Cross-examination.

By Mr. ALDRICH, for the plaintiff:

I suppose he was gone two or three weeks. I went there to drive for Mrs. Alexander on the 11th of August, 1887. He went to Montana after I went there; I suppose two or three weeks. I was not there long when he went away, because I got his gun ready for him. His gun was in the barn. I don't mind of anything else I got ready for him. I know he told me he had a gun, and I got that ready. Maybe it was three weeks after I went there. The horses were down at the pasture when I went there, and they were in quite a while before he came home. I think they were brought home about the first of September, and they were in there before he came home; maybe a week or ten days. I don't know what time
327 & 328 Marius went to Liverpool. He bought this scavenger wagon. I know he was driving it anyway, after he left Mrs. Alexander's. I didn't know him before I went to Mrs. Alexander's. He bought the scavenger wagon right away after he left Mrs. Alexander's. I don't know how long he was gone to Liverpool. He said he went on the money that was paid him in connection with this case. That is what he told me in my barn that night. He said the lawyers of their side paid it to him. He did not say who the lawyers were. He did not say who raised this two thousand dollars. It was raised for them as witnesses, I understood him—raised for the witnesses of the plaintiff in this case. He did not tell me from what source. I don't suppose he knew. He said there was two thousand raised among four of them, and he got five hundred dollars, and that is what he went to Liverpool on; and there were two living at La Fayette, and he didn't know their names, got five hundred dollars; and Henry, the butler, was to get five hundred dollars. I don't know whether he had got it or was to get it.

I don't know when he went to Liverpool, nor when he got back. I think it was in the winter I next saw him. I am not sure whether it was the winter or spring after I first went there to Mrs. Alexander's. He said he had been to Liverpool then.

I saw him for quite awhile with the scavenger wagon, so I think he must have gone away that winter or spring following the time he left Mrs. Alexander's. He said this money was raised by the lawyers in this case. The way he came to tell me these things, he came in there and had a little whiskey in him, or beer, I don't know which, and he was feeling pretty good; and he was feeling like doing up everybody upon the place. He just sat there and told

me this story. This conserversation was probably six or
329 seven o'clock in the evening. I could not say what month it was. I don't remember the month. I guess it was, perhaps, in 1888. I don't know what month it was. I think it was in the winter—either the winter of 1887 or 1888. I don't remember whether it was the first winter I went there or not. It was not this last winter of '89. He has not been in the barn for the last year and a half or, maybe, two years—a year and a half, anyway.

I don't think it was as late as June of 1888. I think it was either in the spring or winter. I know that the doors were closed in the barn. I had heard about the suit at that time. Everybody heard about it. I heard about the trouble. I could not say now whether I knew there was any suit coming up or not, but I had heard about the trouble. It was a general conversation round amongst the coachmen that there was trouble between the plaintiff and the defendant and some case pertaining to this same thing. I don't know whether it was this particular suit or not. That had been talked about for some time.

I was not very particularly interested in what Marius had to say about it. We talked about one thing and another that night—about my being there and about Mr. Lennebacher, and he told a story about how he went to do him up one night. He didn't stay very long. I told him not to talk so loud; I didn't want it; they would hear him in the house. He said he didn't care whether they did or not; and I said you can't talk here. He paid me two or three visits. He did not talk about this case on any other occasion. He came in sober the next time.

Redirect examination.

By Mr. WALKER:

330 I can't fix the day or even the month when Marius was at the stable. I made no memorandum at all. I think it was either in 1887 or 1888, but I could not remember now. I fix the time in my mind that it was after his return from Liverpool by his telling me it was the money he got to go to Liverpool on; that is how I remember it; that is what he said. I have no knowledge as to the date of his return from Liverpool.

Testimony of Emory J. Waldron.

Called on behalf of the defendant and examined by Mr. WALKER:

My name is Emory J. Waldron. I reside in Chicago and am a book-keeper for Armour & Co. I hold a confidential position there. I am general book-keeper. I am a brother of Edward H. Waldron. I know the plaintiff in this case and have known her about 25 years. Before coming to Chicago I lived at La Fayette, Indiana, from 1873 till June, 1886. I am 39 years of age.

I was not personally so very familiar with the home life of my brother during his residence in La Fayette until after the time of

my marriage, in 1881. Prior to that time I had been at his home possibly once a year. I had met the plaintiff before 1873, when I came to live at La Fayette, but had nothing of an intimate acquaintance prior to that time. From 1873 to the time of my marriage I was in the railroad business; with the Kankakee road first, afterwards the Ohio & Mississippi road, and afterwards with the L., M. & B. and the L., B. & M.—the joint roads—and then with the
331 Lake Erie & Western, which was the same roads consolidated. Those were the roads with which my brother was connected and of which he was in charge, and I was under his employ.

Prior to the time of my marriage I saw enough of the domestic life of my brother to give me the impression that it was unpleasant. I don't know as I can remember any particular circumstances, except in a general way. At such times as I called at the house, prior to my marriage, there didn't seem to be the harmony that there ought to be in a pleasant married family. My first recollection is about the year 1871, I think. I was on my way at that time from Kansas to New York to visit my people and stopped at La Fayette to visit my brother; he had a stepson named Beauchamp, and I believe I went down town with him the next day after my arrival and he seemed to be exceedingly free with cigars for a boy; the next day my brother spoke to me about it. I don't remember hearing any quarrel between my brother and the plaintiff in connection with that circumstance. I do not know whether it was the occasion of a difference between them or not. I do not remember any other specific instance until after I was married. I had knowledge of unpleasantness through what I had heard, and when I was at their house I observed quite an extreme coldness against myself on the part of Mrs. Waldron, the plaintiff. I went there simply to visit and my visits were made unpleasant by the plaintiff.

My wife's name is Katy; she is known as Mrs. Katy Waldron; after our marriage we continued to live at La Fayette, and from a general impression I had there was trouble in the relations between the plaintiff and my brother. I did not pay much attention to it until about the time Mr. Waldron left the railroad in July,
332 1883; after the time of my marriage I was at their house more frequently and they were at our house more frequently; as a matter of courtesy they were at our wedding and afterwards the families visited back and forth to a greater extent than I had ever visited prior to my marriage, and after a time, I presume, we visited there, maybe, once in four or, perhaps, six weeks.

I observed some trouble between them in 1883. Mr. Waldron and Mr. Brannan called on me and my wife at our house in the evening. We had been there a little while when the plaintiff called, wrapped at the door, and my wife answered, and she was called into the hall. I did not know at that time who was calling. Afterwards the plaintiff came in and attempted to talk to Mr. Waldron, and he declined to have any conversation with her whatever, and she began with kind of a general tirade against him for his actions and finally wound up by going away alone, leaving Mr. Brannan and Mr. Waldron still present in the room. Her charges were on ac-

count of Mr. Waldron not being at home, and also his habits. I can't remember what they were, to state specifically. They were made to me afterwards, and so frequently in the same manner that I could hardly remember the specific language she used. The subjects were his drinking and his being after other women and being elsewhere when she thought he ought to be at home. The discussion there was quite acrimonious on her part. He said but very little. I don't know that he said anything whatever. At that meeting she did the talking. The tirade continued an hour fully, if not more. Her general tone of voice was loud. I do not recollect any scenes of crying at that time or that she referred to any woman in particular. It was women generally. She mentioned the name of no one. As near as I can remember, it was between nine and ten o'clock at night when she went away alone. I don't know
333 whether, on this occasion, she was afoot or in a conveyance. My place was probably a mile or less from her home. My brother severed his connection wit- the railroad there the first day of June or the first day of July, 1883. This occurrence was after that. If I remember right, it was in the fall or some time after July of 1883. Up to that time I had not known of my brother leaving his home or residing elsewhere than at his home that I can recollect now. After that time her general talk continued right straight along all the time. I didn't see her so very often myself. When I did see her she was always talking about her troubles and her husband, and about how badly he was acting in a general way—the same general complaint I had heard for so long.

The next scene I specially remember was at the time he broke his leg, on the 23rd of October, 1884, on the occasion of Mr. Blaine's visit to La Fayette. I saw him when the accident occurred. It was at the Lahr house. If I remember right his leg had just been set when I came in there. The physician was Dr. Robert M. O'Farrell, and it was between four and five o'clock, as near as I can remember. He remained at the Lahr house possibly fifteen minutes after I saw him there, and we carried him out and placed him in a carriage, and I wanted to know if I should not take him home. He told me, "No, sir." I says, "You can't get care down at the hotel, and the best place for you is at home." He says, "I will not go home." I says, "I insist on taking you home." And he grabbed hold of the door and grabbed it out of my hand and said, "Think of me a minute," and I told the driver to drive on to the St. Nicholas hotel. We took him into his room. It was the room, I suppose, he had been occupying. He stayed there till about half past seven the next morning.

334 I saw the plaintiff there about ten o'clock, as near as I can recollect, the night he broke his leg. I did observe a scene between the plaintiff and my brother. When she opened the door and came into the room he put out his hand and says, "Go back; you can't come in here; I want nothing to do with you." She burst out into tears and one of the gentlemen did. She remained, I presume, about three-quarters of an hour, or perhaps an hour. This was at the St. Nicholas hotel; the same night his leg

was broken; after ten o'clock at night. I do not remember whether the doctor was there at that time. There was no reconciliation between them before she went away, only that he declared he would never go home. There was not any change in that statement before she left. I remained there. Other people were present.

After that interview I again urged him to allow me to have him taken home; that he could not get proper care at the hotel. He would not do it. He said he would die before he would go home. I left him, I presume, between twelve and one o'clock that night. I again went back at six o'clock the next morning and renewed my urging for him to go home, and he would not, or allow me to take him home, or anything of the kind. I proposed to stay right there, and argued with him, I presume, an hour or more, and he finally consented to let me arrange to take him home, which I did, and he was taken home. The plaintiff was not at the hotel that morning. If I remember rightly it was about half past seven when we took him home. We found her at home when we went there.

The final inducement that brought him to agree to go home on that occasion was simply my arguments with him that he could not get care at the hotel. I also used the argument that he ought to go home on behalf of his son.

335 I went there to the house occasionally while he was lying there with a broken leg. I can't recollect that he assigned any reasons at that time why he could not go home. I never personally witnessed any disturbances of their domestic relations after that. I can't say that there was great friction there during all the time he lay in the house with a broken leg—general coldness on her part towards him. He seemed to be all right. In all the scenes I have ever witnessed between my brother and the plaintiff the plaintiff did the talking. He was very close-mouthed always. I have heard him retort to her accusations on many occasions which I can't particularly specify.

I knew my brother left home on the 8th of February, 1885. That fact came to my knowledge the day that he left. I saw the plaintiff the next day. I knew he had gone to the Saint Nicholas hotel. The next day the plaintiff came to our house, and in a general talk over the case and deploring his leaving she became, as she became before, very bitter against him, indeed, and said she could shoot him or kill him in a minute. "He has five thousand dollars life insurance, and that will more than pay his debts on the property and leave me the property clear." The balance of the conversation was simply in generalities as to what she had told before, his general habits and being after other women. It was always women. This interview lasted possibly an hour. Her tone on that occasion was the same as it always had been—very loud, rather vehement—and her manner the same. My wife and sister-in-law were present at that interview, the wife of my brother Charles Waldron, from St. Louis. My brother Charles was dead at that time. I suppose his having left home was the reason she came there and was the subject of the interview.

336 The next interview I remember was in the fall, where all were present. She came between February and that time. She was at my house almost every day in the week and talked with my wife about her troubles and what a terrible man Mr. Waldron was and how good she was, till it began to show itself in my wife's nervous condition, until my family physician notified me that I must put a stop to that and that my wife's nerves would be ruined entirely. During one of those interviews I met the plaintiff at my house, and I told her the constant talking and harping on that subject in my wife's ears must stop right there; that I would not have any more of it whatever; that I had been so advised by a doctor and, while I hated to adopt any such harsh threats or anything of that kind, I must insist that the talk stop. After that I met her very seldom at my house. She would come there when I was away and talk constantly. The next general meeting we had was in September, 1885. I was employed in the fast freight line service then, and had my office with my brother, in the same room. The interview was on the 9th day of September. I knew from Mr. Waldron at that time that a lawyer in La Fayette had been consulted that morning or the morning before with reference to procuring a divorce, and that the papers would be filed for him in the divorce case the next morning after an interview by that attorney with the plaintiff. My brother was to make application for a divorce from her, and she came to the office with my wife. At the time they came I was at the head of the stairs waiting for my wife, and Mr. Waldron was inside of the office at his desk. My wife had an appointment to meet me that day early in the afternoon. She was late about keeping her appointment. When she came up I remarked about her being late, and she stated that Mrs. Waldron had detained her. They came together and I met them at the
337 head of the stairs and they came into the office afterwards.

When they came in my brother turned and said, "What do you want here?" to the plaintiff, and she said, "I came to see you, my dear husband," and he said, "You can't see me," and went out of the office. Myself and wife were standing in a little entry at the door, and as he came up we told him he ought to go back and have a talk. He said no; he had seen his attorney, and the papers in the divorce would be filed the next day, and he would have no interview and no scenes; he had had all of that he wanted and would have no more. Through our arguments he finally agreed to go back into the room, which he did. My wife and I went in with him and I locked the door. He went up and sat down and she began to discuss their domestic matters with him, and he said he declined to have any discussion on the subject whatever; that the matter had been discussed time and again, and that matters grew worse instead of better, and he had resolved to take the step he had and he would not recall it. She then began to plead with him, and finally threw herself on the floor and prayed to God, and cried, and so on in a very plaintive manner to him, and said she had been through fire and had been purified and was ready to concede everything if he would come back home. He said, "I will not go back

home; I have tried it and I will not try it again." They continued in that sort of a general strain. He was crying at the time, and finally he turned to my wife and said, "What shall I do?" My wife went over and put her hand on his shoulder and said, "For the sake of Winnie go home and give her one more trial." He said, "How can I, when I have given her so many?" She said, "For Winnie's sake, if for nothing else, give her one more trial," and then the plaintiff, still crawling on the floor on her knees, kneeled before him and said, "If you will go home, I will bury
338 the past, and we will live for our son in the future. I will never mention a thing that has occurred in the past, but we will simply live for him." My wife laid her hands on his shoulder, and at that I heard somebody at the door and opened the door, and it was her son, and we brought him in, and my wife said to him, "Winnie, come in," and he did, and there were some words about his going home, and she said, "Winnie, you tell your father how pleased you are," and he went over and they simply ordered a carriage and went home. When my brother agreed to go home he said that he would not condone one act of hers in the past, but he would go home solely and wholly for the sake of the boy, and they would labor together to see if they could save him.

There was somebody else came up to the door during that interview. It was exceedingly noisy and a policeman came to the door. The plaintiff stated, when she was still on her knees before him, that she would forget the past and never mention it again, and that she would also burn her letters and everything else that she had and simply live for the future. Her general request was for him to come home on account of the son.

When we were ready to go the carriage came there and took my wife and the rest of us out to his house. I believe they had an oyster supper. I don't remember the details exactly. We took dinner there that evening. As nearly as I can remember, he went into his favorite room on the return home. There were two rooms adjoining, which he called the sitting-room and library. He never said a word when he walked into the house; simply walked into his room where he used to sit and smoke when I visited him. With his hands behind him he walked around and looked at his favorite things, pictures and one thing or other. I addressed a question to him and he seemed to be very much affected, and I said
339 nothing more; neither did he. He didn't make any remark whatever from the time he entered the house until he sat down at the table, and I don't think he made but one or two remarks then. The supper was not a feast on the return of the prodigal son. I don't think it was a pleasant occasion. I don't believe the plaintiff spoke a word all through the supper. That is my recollection. Very soon after supper my wife and myself went home. Immediately after supper she was called upstairs by the plaintiff, and they remained upstairs half or three-quarters of an hour, perhaps. Then my wife and I returned home. This was on September 9th, 1885.

Within a week, I should say, after that she came to my house

again on two different days, and on both occasions made use of language to the effect that she had laid aside her dignity and womanhood to promise him everything when he had promised her nothing, and that thing rankled in her bosom.

I think it was only a day or two after he had gone home that he came into the office one day and seemed to be feeling very badly. He gave expression to dissatisfaction about his home life, and did so right along after that repeatedly. I can recollect two or three different occasions after that when he stated he could not stand it and would not stand it, and proposed to leave home again. I urged him then, saying if he had found he could not stand it and was determined to leave never to leave again and live in the same city with the plaintiff.

In May, 1886, I think it was, my brother engaged himself in a new business with the Deeds Metallic Packing Company and came to Chicago. The headquarters of that company was at Indianapolis, and he was there very frequently before coming to Chicago. My recollection is he came to Chicago about the middle of May, as I understood, permanently. I was living at La Fayette. I
340 came to Chicago in June, 1886. It was four days or perhaps a week after Mr. Waldron came. My wife removed here with me and we have lived here ever since.

At the time my brother left her and came to Chicago I understood from him that he had left for good. So far as I knew, these unpleasant relations had continued up to the time he left.

I met the plaintiff in Chicago in July, 1886, following my coming to Chicago. We had been here but a short time until I learned from my wife that the plaintiff was in my house and wanted us to go that evening to see Mr. Waldron. I consented, and we went to his rooms at the Beaurivage flats. We went in there together. I can't remember exactly the form of the conversation that took place. The gist of her conversation was as to what he proposed to do. He made a proposition there to her that if she would give him a divorce he would turn over every foot of property he owned in the world, clear, in trust for the son, Winnie. She stated that she would not take it in that way, but that she would take the entire property in her own name. She made that proposition and he declined it. He said he never would agree to any such proposition whatever. He was perfectly willing to give every dollar of his property in trust to her for the son, but he never would place it in such a way that her scape-grace son would have a dollar's benefit from it. It was quite a long interview. We were there quite a number of hours during the evening. I think it was after twelve o'clock before I got home with my wife.

During that time there were different subjects dicussed. She would not talk at any one time on any one subject for any length of time, but would branch off to some other subject. It was a rigmarole throughout until she finally accused my wife and myself of having coaxed him to go away from La Fayette to
341 Chicago. Then there was a scene. I had a hand in that myself.

If I remember rightly, the only talking Mr. Waldron did was on the subject of what he would do in case she would give him a divorce; otherwise she did the talking and he did the listening; it was the same line she had followed throughout their meetings; the same old story; they could not agree, and my recollection is the last train on the Illinois Central which would take us home was coming, and my wife and I left them there; at that time we were living at No. 5 E. 22nd street, near the lake and the Illinois Central depot, and we took the train at Van Buren street and rode to 22nd street, and left the plaintiff and my brother there; Henry Kirtland was there also; he went out during that interview, I think.

I remember visiting the plaintiff at her home in reference to a letter late in the fall or early in the winter of 1885; that was after the return of my brother to his home in September; Mr. Waldron was down on the river camping, and I was the other occupant of the office with him, and the mail naturally was all delivered to me; among the mail were one or two letters addresed to him in a female hand; in the evening when I went home I left the mail there; when I went back the next morning I received some more mail and went to lay it in its place on the pile on his desk and found some of the letters gone, one in particular addressed to him in a female hand. I found the windows closed and knew the door had been locked when I reached there, and I saw the janitor and found that Winnie Waldron had obtained a key from him and gone in the office. I went immediately to the plaintiff's residence and told her I wanted a letter that had been taken out on my brother's office the night before; she declined to give it up. I told her I
342 was in charge of the office and did not care to have a letter stolen out of there while I was in charge; that what she did with the letter or anything afterwards was nothing to me, but as long as I was in charge of the office I did not care to have that thing going on; she said, "You can tell Mr. Waldron whatever you please, but I will keep the letter." I didn't get it. I think I told my brother about it.

I have no doubt I communicated to my brother the statement she had made about shooting him. I recollect one occasion when I told him the same thing and he remarked that was nothing new; she had threatened to shoot and poison him time and again and he supposed she would; that was during the year 1885, if I remember rightly, while he was away from home. I could recollect many times when she threatened to kill him and get his life insurance and he told me half a dozen times he believed she would poison or shoot him.

Cross-examination:

By Mr. ALDRICH:

At certain times my brother drank a good deal. I first noticed his drinking anything to excess along in the latter part of 1882. I never knew of his using liquor at all prior to that time. I had

never seen him use liquor or heard of his using it before. He was exceedingly strict at that time with the men in his employ, and if he had been in the habit of using liquor before that, I think my associations with him were such I would have known it. He might have used it in a moderate degree without my knowing it.

I should think the plaintiff seemed to be attached to her husband.

My brother was not intoxicated at the time he broke his
343 leg. I was called from Pythian hall and notified that his leg was broken and shortly after I went into the room; his son Winnie, who was a member of the drum corps, came in with his drum at his side and said he had just learned it. I don't know who notified the plaintiff of his injury. She came to the Saint Nicholas hotel about ten o'clock that night and remained there, possibly, about three-quarters of an hour or maybe an hour.

The train bringing Mr. Blaine there was quite late that night; it didn't get in until dark. There was a procession there that night, but I don't know at what hour. Mr. Blaine had not reached La Fayette at the time this accident occurred.

After the plaintiff left the Saint Nicholas hotel that night she did not return there up to the time I left with him the next morning, and my recollection is that Winnie did not come to the Saint Nicholas hotel at all, either that evening or the next morning.

My feelings toward the plaintiff were pleasant to the time of the meeting at the Beauvirage hotel. I never met her, that I know of, after that, because of her accusation that I had helped persuade my brother to come to Chicago.

At the interview on September 9th, 1884, before my brother returned to his home, I think Winnie came into the office at the extreme last part of the interview. I don't think he could have been at the door before that, for I heard somebody at the door about the time the interview was closed, and I went there and saw a policeman going down-stairs, and Winnie was not there then. My brother went home entirely on Winnie's account, and for no other purpose, as he stated then. He had stated that he positively would not go home under any circumstances whatever, and the argument was then used that he should go home on Winnie's account.

344 There might have been a difference of opinion as to whether at that interview the plaintiff acted as if she were devotedly attached to her husband. I think she urged him under about every consideration she could to return.

I have heard her on numerous occasions threaten to shoot and poison him.

I am not the same E. J. Waldron who shot a man at Earle's park, Indiana. I never had any difficulty of that kind nor any difficulty whatever at any place. I never was there as the agent of the C., L. & C. railway. I was there once traveling on the road for Robb & Morton, a grain firm, in 1874.

I never was accused of robbing a gambling house on the corner

of 4th street and South avenue, in La Fayette, and never heard of such a case.

Redirect examination.

By Mr. McCoy:

I never saw and there never existed the slightest occurrence to enable Mr. Aldrich to ask me any such question in any way, shape, manner, or form. The only person besides my brother and myself that has ever used the initial "E" in connection with the name Waldron was Ed. Beauchamp. He used to travel by the name of Ed. Waldron. I never heard of his using my initials. I never heard of his getting into any scrapes of the kind I have just been asked about, only his states-prison scrapes. I do not remember any killing scrape that he was mixed up in or never heard of any. I do not remember of any robbery of a gambling house that he was connected with.

345 I am now one of the book-keepers for P. D. Armour. Two of us work together, and our positions are the highest positions in the book-keeping of that office. I should think that the work of the entire office force—over two hundred and fifty men—passes through my hands, and I and my associate make up the statistics and balance sheets of the business for the entire business of P. D. Armour. We furnish figures for the entire thing. My associate on those books is the confidential man of Mr. Armour and has been for many years, and I am his assistant and associate.

I have never in my life at any time had any difficulty, any accusation of dishonesty or trouble of any kind until to-day. I was three years in a bank and the balance of the time in the railroad business up until I came here, with only one change, to take a position with the Ohio & Mississippi road. I came in 1886 to Chicago for the Deeds Metallic Packing Company of Indianapolis, when they started a factory, and then I have been with Mr. Armour for a year. Those are the only changes I have made since I left my home in 1868.

I remember an interview with the plaintiff soon after my brother left the railroad in June or July, 1883. She came to my home at the Stockton house at the time, and after going throug- the usual routine which she had and which I had heard so often, she made the remark, "I wonder what makes him do so." I said to her, "I understand that you have been to Chicago to see Mr. Cummings and have otherwise worked to get him out of his railroad position." She made the remark, "Well, I thought I would have him more with me. He is interested in the stock business, and that would keep him more at home."

346 *Testimony of Mrs. Annie F. Rhodes.*

Called on behalf of defendant and examined by Mr. WALKER:

My name is Mrs. Annie S. Rhodes. My home is in La Fayette, Indiana. I know the plaintiff in this case, Mrs. Mary Waldron,

and have been acquainted with her forty-three years. I met her when she was living in La Fayette with her then husband, Mr. Waldron. The last time I met her to have any conversation with her, I believe, was in 1885. I went to the house to see her mother, and after we went to the room to see Mrs. Russel we came out and I made a remark about her nice home. She told me she supposed I had heard of her difficulty with Mr. Waldron. I said, "I heard something of it." I said we all had more or less to put up with from our husbands, and she then told me she would cite an instance. She said that Mr. Waldron had been ill at one time, and that after he was getting better there came some one from the city with a note to him and he told her he would have to go to La Fayette on business, and that after he had gone—I don't know where she found the note or letter—in his pocket or somewhere—from some female, and that it was an appointment with him of some kind, and that afterwards, upon his returning home, they had trouble about it, and Mr. Waldron, after she had talked some time to him, said, "Well, what are you going to do about?" "Well," she said, "I am not going to put up with it," and he said, "Mrs. Waldron, if you live with me you will have to;" and she said to me, "How would you like that?" I said I would not like it, but I supposed I would have to put up with it if I lived with him. We then came out of the house and I rode home in the buggy with her. We were talking about Mr. Waldron. I asked her if it was any particular woman, and she said, Oh, she didn't know
347 who, but that ever since Mr. Waldron had quit a certain position on the railroad it had been women and wine, and that had been their trouble. That is all I know. I bid her good-bye and never spoke to her since. I have seen her on the street, but not to talk to her. I have not seen Mrs. Waldron to speak to her for years. That conversation must have been somewhere in August, 1885. I was out walking and went to see Mrs. Russel, who was an old friend of our family. We have known each other since I was quite young.

Cross-examination.

By Mr. ALDRICH:

I did not call on her very often. I had not seen Mrs. Waldron or Mrs. Russel for six years when this happened. That was the only conversation I had with her regarding family affairs. I met her a number of years before. She had spoken to me about having trouble with her son, but nothing against Mr. Waldron.

Testimony of Mrs. Bridget Milann.

Called on behalf of the defendant and examined by Mr. WALKER:

My name is Bridget Milan. I reside at 2923 Shields avenue. I have lived there seventeen years and I am a married woman. I was acquainted with Mrs. Alexander, now Mrs. Waldron, that lives on Michigan avenue. I have been acquainted with her about

fifteen years and have worked for her five or six years, maybe more, about the house, cleaning house, chamber work, and
348 everything. I go there day times and return home to my family.

I was there in the summer as late as September, 1887, before Mrs. Alexander's marriage to Mr. Waldron, about the time they were making some changes in the house. I know John O'Neil, the electric man that fixed the bells and batteries and wires. I saw him in that house at work one morning at a pretty early hour. I got in about seven o'clock and he came about half-past seven. I let him in. He was going to fix the batteries in the dark closet on the third floor from the ground. When he came in I was in the kitchen, waiting to get upstairs to do the chamber work, and while he was in that closet at work I went upstairs. He asked me for a candle, because it was dark. I gave it to him and told him he could get a candlestick in the dark closet. Then I went upstairs. He went up before me. I turned into the bath-room to see if the bed-room that leads into the bath-room was open, so I could get to my work. It was not. So I passed out and went about five or six steps up on the stairs leading up to the third floor and I saw Mrs. Alexander at the looking-glass at the dressing-case, and at the same time Mr. Guthrie came down the stairs from the top floor, and when he got as far as the dark closet he said, "Is that you, Annie," and the men in the closet said, "No; it's O'Neil. It is all right," and Mr. Guthrie turned and went into the bath-room, and I waited until he came out, about five minutes, and then he came out and went upstairs and came down with his hat and coat on. Mrs. Alexander, a quarter of an hour after that, came out and hollowed to Mrs. Guthrie and asked if she was ready for breakfast. She said, "Yes," and went down stairs and Mrs. Alexander after her. I went in and made the beds. This man O'Neil was in the closet all the time. I had the bed nearly made when he knocked and wanted to come in. I said,
349 "Certainly," and let him in. He wanted to see the barn bell. He went to look at it, and I turned and got the bed-room ready.

The front room on that floor is a sitting-room, and there has not been any bed in that front room at all since the death of Mr. Alexander. The bed-room is back of the front room, and the buttons connecting with the wires to the stable are in the bed-room at the window—the room next to the bath-room. It was not in the alcove in the front room.

Before the death of Mr. Alexander the front room was used as a sleeping room and the bed was in the alcove; but after Mr. Alexander's death there was no bed in there at all, There was no bed in there in June or July or at any time in the summer of 1887—the summer before Mrs. Alexander was married.

Mr. Guthrie was a gentleman that came there to the house visiting with his wife. They occupied the guests' room on the top floor in the front of the house. There was only one guests' room. Mr. Guthrie, when he came down stairs and through the hall, had his pants and vest on, but no hat or coat, and he said, "Is that you,

Annie?" and Mr. O'Neil answered, and then he passed on to the bath-room and then went back up to his room after he came out of the bath-room. I did not see Mr. Waldron there at all at that time.

Cross-examination.

By Mr. ALDRICH for the plaintiff:

I have not been talked to at all about this case. I was brought right here from my work. No one has interviewed me about the case. I told Mrs. Walker, where I work, that I saw Mr.
350 Guthrie there. I am employed by a number of ladies living on Michigan avenue. I have been working for Mrs. Walker, I guess, 18 years. She is the wife of Mr. Walker, the attorney for the defendant in this case. Shields avenue, where I live, is on the south side, between State street and the Ft. Wayne track, near 30th street.

I do the general house-cleaning and go in to work for Mrs. Alexander when there is anything to be done or company or any extra work; then I am called in. At that time the servants in the family were Hannah Cummings and Bridget McInerny and Ellen Flanagan and John Wilson, and I don't know the other man's name. There was some other young fellow there, cleaning windows and so on. I guess he had been at work there every day about four weeks prior to that time—up to the first of August. They started to commence the improvements in the house as soon as we commenced to clean house. It was in July, 1887.

I do not know about Mrs. Alexander and Mr. Waldron going East, and Mr. Waldron was not in the house on that particular day and on those particular weeks, too, all through August. At the time this occurred and Mr. Guthrie and Mr. O'Neil met there the improvements of the house had been finished. There was not any door opened there just before Mr. Guthrie saw Mr. O'Neil—only the door into the bath-room, about five or ten minutes before Mr. Guthrie came down. He did not have a night dress on. I never saw a man with a night dress on in my life in that house.

Redirect examination.

By Mr. WALKER:

I talked to Mrs. Walker, the wife of the attorney for the
351 defendant in this case, about what I had seen. I talked to her the day before yesterday, in the evening, and then in the evening, just as I was going home, I told Mr. Walker about it. Up to that time I had never bothered my head talking with anybody else about it. What called my attention to this matter was O'Neil's testimony about seeing a man in his night shirt, when I heard it read in the newspaper, and Mrs. Walker said, "It is too bad he tells such things," and I said, "Yes; it is a lie." My attention was called to it by the newspapers stating what O'Neil had testified, and I told

Mrs. Walker what I had seen. The first conversation after seeing that statement in the Daily News was in Mr. Walker's house.

Testimony of Philip Lenneebacher.

Called on behalf of the defendant and examined by Mr. WALKER:

I reside at 2028 Michigan avenue, the residence of Mr. and Mrs. Waldron; with the exception of six years that I was away, I have lived there since 1861 or 1862.

I was acquainted with E. S. Alexander in his lifetime. I knew him from 1857 up, and I have lived with Mr. and Mrs. Alexander before his death, since 1861 or 1862, am not quite positive which, with the exception of six years I was in Quincy. I continued to live there after Mr. Alexander's death and am there still.

I am acquainted with Mr. Edward H. Waldron very well; before his marriage to Mrs. Alexander and after the death of Mr. Alexander, when he staid in the house, he occupied the front room on the top floor, the room in front of mine, which was on the top floor back of the front room; to reach that room he had to pass my door, and could not reach it without.

352 I don't think I was absent from the house a day nor a night during the time after Mr. Alexander died and up to the time of the marriage of Mrs. Alexander and Mr. Waldron. I know I was not, in fact. I *was* always saw Mr. Waldron while he was there about the house.

I never saw any impropriety of conduct between Mr. Waldron and Mrs. Alexander on the part of either, and I had every chance in the world to know everything that was going on. My room door is open three hundred and sixty-five nights in the year; it is never closed, not even when I retire; it is open into the hall, and never in that time did I see anything that Mrs. Alexander did that I would condemn in my own sister—not the first thing.

I knew the coachman, Marius Casperson, when he was driving for Mr. Alexander's family. I never had any words with him of any kind about the care of the stable, the horses, or driving. I never interfered with anything of that kind; it was not any part of my business. I remember when Mrs. Alexander was sick, in 1886. I was in and out of that sick-room during that time very frequently; any time, nights, daytimes, and all; the room was open to me; the house was an open book to me and always has been. I remember Mrs. Guthrie was there at the time to assist Mrs. Alexander and care for her. She was there some time. Other ladies were calling. I understood that she was a very sick woman—dangerously sick—and I gave Mr. Waldron a great deal of credit for his attention, for I don't think she would have lived unless he had given it. She was, a part of the time, delirious.

Cross-examination.

By Mr. ALDRICH:

My duties in that house were simply those of a friend. I
353 lived there and have lived there since 1861. I have not dined with the family for some time. I got my meals very irregularly at the house. I am not engaged in any business at present. I have been connected with the American Express Company. I had charge of the force at the Van Buren street office. I had to give up my business on the 21st of December, about two years before Mr. Alexander died. I was very sick that winter. I was in the house a great deal of the time sick, but still was connected with the company, and am to-day. I am pensioned by the company. At the time of Mr. Alexander's sickness, preceding his death, I was not doing anything, and since that time I have been living peacefully and doing nothing. I have always been irregular about my meals. I went to California about the 12th of March, *188* 1888, after the marriage of Mrs. Alexander and Mr. Waldron. I had been to California prior to that time, in 1857. Mr. Waldron was there at the time I went to California, on the 12th of March, 1888. I could not tell what period he had been there; dates are a thing I seldom pay much attention to, and he was there a great deal of the time after Mr. Alexander's death—that is to say, two or three months after his death he was there a good deal of the time. He slept there for a time; I don't know how long, but I know it was some time; that was not only when Mrs. Alexander was sick, but at other times; to the best of my recollection it was after the sickness. I could not tell exactly what year it was. Mr. Alexander died in February, and it strikes me it was in the July following. I think they went East the next summer or spring. I know I returned from California while they were gone East. I met them here at the train when they came back. I had been back about
354 three days then. I was in California from the 12th of March until the 12th of August. Mrs. Alexander's severe fit of illness was while I was there in the house. I don't think she was sick while I was gone.

Redirect examination.

By Mr. WALKER:

It was the twelfth day of March that I left here to go to California and I got back here on the 20th of August, and that will be two years the coming March that I went to California; that would make it in March, 1888, I went there. Mrs. Alexander was married in October, 1887, and the time I met them at the train on their return from the East was a few days after I got back from California, and they were married at that time. They were married before I went to California; I think the September before. I have been connected with the American Express Company for thirty-five years and I still have a connection with them, and under their system after a certain number of years' service they retire their men.

Recross-examination.

By Mr. ALDRICH:

I remember the time when they fixed the house and changed the dining-room. Prior to that time the dining-room had been in the basement, and they changed it so it was upstairs. They took the library for a dining-room. I was here at the time that was done and I went to California after that. It was all completed at the time I was here, but the year a good many of these things happened I have not kept account of.

355 *Testimony of Mrs. Katie Waldron.*

Called by defendant and examined by Mr. WALKER:

I am the wife of Emory J. Waldron, the witness that was on the stand this morning. I have been married since December, 1881. I was born and raised at La Fayette, Indiana, and was married there. I always lived there until we moved to Chicago, in 1886. I am acquainted with the plaintiff, Mary A. Waldron. I first became acquainted with her a month prior to my marriage. Up to that time I only knew her by sight. Mr. and Mrs. Waldron called on me just a month prior to my marriage. My maiden name was Katie Stockton. We left La Fayette to come to Chicago June 10th, 1886. Since that time we have resided at number 5 E. 22nd street, in Chicago.

During the time I lived in La Fayette after our marriage I saw Mr. and Mrs. Waldron more or less at their home and my home. The first year of my married life I was not very intimate with them, and saw them occasionally and exchanged visits. After that I saw them very frequently, both of them. In 1882 I saw them very frequently, both at my home and theirs and elsewhere. In 1883 I can recollect a great many times I met them both. At those interviews with Mrs. Waldron herself, I am very sorry to say, I heard nothing else discussed but their domestic troubles. Their domestic life was not a happy one.

I remember her calling at my house in 1882 and the circumstances under which she called. Mr. Waldron was present. He came first. As near as I can remember now, it was about three o'clock in the afternoon. I had a visitor at the time, Mrs. Ed. Andrus, a friend of the family. There was a ringing at the door-bell and my girl announced Mr. Waldron. I noticed as soon
356 as he came into the room that he had been drinking somewhat. He sat down on the lounge I had in my room. I asked him what the trouble was, and he began to tell me that he had quite a scene at home, and that he had left home for good, and that he came to tell us he was going away. Mrs. Andrus and I both talked with him about it. He would not listen to us and laid down on the lounge and went to sleep. I insisted on Mrs. Andrus remaining. After about an hour the plaintiff, Mrs. Waldron, came up in her buggy and Winnie was with her. He got out and re-

mained at the horse's head. Mrs. Waldron came in. As soon as I opened the door I said her husband was in the room. She said yes, she supposed he was and supposed also he was intoxicated. I said he was somewhat, and there was quite a stormy interview between us all. She asked her husband what he was doing there and he told her. She turned to me and asked me if I knew that people were making remarks about his coming to our house. I said I didn't think anybody was making remarks but herself; that it was his brother's house and he had left his own home and hadn't any place else to go. He got up and left the house and said he would never enter his house again and went down-town. He said that to her. She tried to persuade him to return home and spoke how wrong it was to leave his home and family and become intoxicated as he was doing. I should judge she remained two or three hours after Mr. Waldron left. During that time the conversation was altogether about Mr. Waldron and his leaving home and if I really thought he had left for good and what wish he had about it. She was discussing that matter until she left. That was in 1883.

After that I did not have an interview with Mrs. Waldron for nearly a year. We were not friends for nearly a year after; until Mr. Waldron broke his leg. The manner in which the plain-
357 tiff talked to me and insulted me in my own house about her husband calling there, as I have just stated, was what interrupted our relations. Prior to that time I rarely ever saw Mrs. Waldron that she didn't speak of some instance of trouble between them.

I remember very well a time when we were driving on the street and the horse wanted to turn out to a house of a somewhat questionable character; that occurred on two or three rides I had with Mrs. Waldron, and I am not positive whether one was prior to 1883 or after we became friends again. We were driving out and she drove into a part of the city I knew nothing about, and she didn't guide her horse and it went up to the side of the curbstone and very nearly stopped. She turned to me and said, "Does not that prove where my husband goes?" He has been driving this very horse to this very house or she never would have stopped here." She said th- character of the house was bad. On other occasions when riding with her the same thing occurred and I think it was on the same street and in the same vicinity.

I can't recollect the time when I had a talk with her about a letter she found in Mr. Waldron's pocket. It was after his accident with a broken leg and after he went home in September, 1885.

The interview at my house, about which I have testified, was about six months previous to the birth of my child, and it was born on the 15th day of April, 1884. After that interview I did not see the plaintiff at all to talk with her for nearly a year.

After Mr. Waldron had almost recovered from his broken leg, Mrs. Waldron, the plaintiff, sent her carriage for my husband and myself to come up there and we went; it was the first time I had seen her in the house for a year to talk with her; that was in the

fall of 1884. I think we were there a couple of hours to-
358 gether. At that time she told me what a seige she had had with Mr. Waldron while he was in the house confined to his bed and how nicely she had taken care of him, how much she had done for him, and she said, "To show you how ungrateful he is to me, all the tim- he has been in bed and I waiting on him he is writing letters to women and paying his coachman money to post these letters without my knowledge." She spoke about his receiving letters from other women, but spoke of no particular letter at that time. After that, in 1884 and 1885, I saw considerable of their married life; it was not a happy home.

I remember when Mr. Waldron left his home in February, 1885. Prior to his leaving I had frequent conversations with the plaintiff both at her house and at mine. I don't think I ever saw her but the burden of her conversation was complaint of the conduct of her husband. She always complained of his want of love and affection for her and of his habits of drink. Wine and women was the burden of her complaint.

I heard my husband testify here thid morning. I was present and heard the statements of the plaintiff relative to an insurance policy on the life of Mr. Waldron. The conversation occurred in my rooms in the Stockton house. I don't know as I can state the year. It is my impression it was while Mr. Waldron was away from home in 1885, although I am not positive of that.

As near as I can remember, she had been complaining of Mr. Waldron's neglect of her, of the way he was doing, and my husband asked her if she didn't think she had made a mistake in getting him out of a situation and her remark was that she thought she could have him more at home; that he was interested in the stock business and she thought he liked it and would be at home with her all the time. When that statement was made to her by my
359 husband about her gping to Chicago and seeing Mr. Cummings, she neither admitted nor denied it, only saying what I have said that she thought she could have him more at home. That was her only answer.

The time she spoke about the life insurance policy was about the same time. I am not positive whether it was precisely the same time or not. They were discussing Mr. Waldron and the way he was doing and his being away from home, and Mrs. Waldron got very angry at something my husband said, and said she felt at times she could kill Mr. Waldron; and she said, anyway, that he had a life insurance policy of five thousand dollars, and that would defray all expenses and leave the property free and clear to her. She was quite excited and I don't know whether she knew what she was saying at the time or not.

At different times she read me quite a number of letters she had found in Mr. Waldron's pocket or about his pockets. I think the first one she showed me was after Mr. Waldron went home in 1885. I heard the plaintiff testify the other day. I heard her statement that one of these letters was taken from the office by me and carried to her and opened by me and read to her; that never occurred. I

never took a letter from the post office or from Mr. Waldron's office or any office that didn't belong to me—a letter that had been addressed to Mr. Waldron, written by a woman or man or any person, and take it to Mrs. Waldron, open it and read it; I never did. I remember when Mr. Waldron was living at the Saint Nicholas hotel in 1885. I never was in his room. My husband and I took a Sunday dinner with him at the Saint Nicholas; that was the only time I was there; that was in a public dining-room.

I remember when he left the hotel and returned to his home. I was present at an interview between himself and the plaintiff,
360 Mary A. Waldron, at his office on the day he returned home. I had an engagement with my husband to meet him at his office between two and three o'clock, and while I was preparing to go down-town the plaintiff, Mrs. Waldron, called. She asked me where I was going, and I said I was going down-town to meet my husband. My husband's office was then with his brother. She said, "I believe I will go down-town with you to the office and see my husband," and she did so. She talked to me about their troubles at our house before going away from there and detained me more than an hour. She kept up that conversation until we got down to the main street; then she left me and went into a store, and I went on; then she followed me in about ten minutes and came up to the office. She stated to me in that conversation that she would like to go to his office and see him and try to pursuade him to return home. She did not go at my invitation. When I went in the office my husband and Mr. Waldron were there. My husband asked me why I was so late, and I told him that I had been detained at home by the plaintiff, Mrs. Waldron, calling, and she was coming to the office in a few moments; that she was on the way there. My husband told Mr. Waldron that his wife was coming. He didn't say anything at the time, but when she came in he asked her what she was doing there. She said she came to see him. He got up and went out into the hallway right outside of the door. I followed him out. I asked him what he was going away for. He said he didn't want to have an interview with her; it would do no good. I tried to pursuade him to go back and talk to her. He said he had just that morning consulted Judge Cofforth in regard to a divorce, and the next day he was going to file his papers. I did all I could to pursuade Mr. Waldron to go back and have an interview with his wife, and he came back.

361 The plaintiff, Mrs. Waldron, asked her husband if he would not return home with her. He said he would not. She presented every inducement possible for him to return home, but he would not listen to her. She told him if he would come home that she would be a different woman altogether; she would never refer to anything in the past, and they would live for the future and for Winnie. To say her words, she said she had been through fire and was purified, and if he would return home with her she would destroy every letter that she had against him and never in any way refer to the past or anything that had ever transpired between them.

Mr. Waldron stated that there was no use of trying it any more; he had made a good many attempts, and it was always the same thing over again; that the trouble was her jealousy. I said a good many things trying to pursuade him to go home. It was a very pathetic scene. The plaintiff was on her knees crying and begging him to return home for Winnie's sake if not for hers. She told him that she would never in any way make his life unhappy again; she would not refer to anything he had done, and she felt their life could be happy again. Mr. Waldron would not listen to her for quite a while, but finally he did conclude to go home, and said, "Mary, I will try it once more for Winnie's sake alone. I want it understood that I don't condone any offence at all in the past; that I go home for my son's sake alone, and if we work together perhaps we can save Winnie and live together, at any rate," and he went home and we went with them at Mrs. Waldron's invitation to supper, and that evening after supper the plaintiff went upstairs and called me up. She said, "Kitty, have you any idea of what a concession I made this afternoon to promise my husband everything and he promise me nothing? I laid aside
362 my womanhood to go down on my knees and promise him all these things and he simply said he would go home; that was all the concession he would make." I asked her if she was not going to do as she had promised in the office—destroy all those letters. I told her if she did not she never could forget, because things would come up before her constantly, and perhaps when she did not wish to she might refer to those, and as she had promised she would not Mr. Waldron would leave her if she did, and if he left her I didn't think he would return to her. She said at that time she would destroy all those letters, and afterwards she told me she hadn't. She had thought she would not burn those letters; that they might be used in evidence against him some time. I think it was just a few days afterwards that she referred to the letters again and told me she hadn't destroyed them.

This was in September, 1885. I saw her very frequently afterwards during that fall and the following winter. I could not observe that there was any change in the conduct of either one toward the other, and I knew their home was not any more happy than it had been before. She was complaining of her husband and his conduct. Her complaints were of the same general character as those I have detailed. We left La Fayette and came to Chicago in June, 1886, and I have lived in the same place in Chicago ever since—nearly four years.

I was present at an interview between the plaintiff and Mr. E. H. Waldron at his rooms at the Beaurivage in July, 1886. Mrs. Waldron asked him if he would not come home—if he hadn't any idea of ever returning home—and he said he had not. She offered him every inducement she could for him to return home, but he said he would not. He spoke to her at that time about a separation,
363 if I remember correctly, and offered her all the property he had in trust for Winnie if she would take it that way. She declined to do so. She said if she ever did agree to anything of the

kind it would have to be given to her absolutely. We went down to the Beaurivage immediately after dinner, about half past seven in the evening, and I don't think we reached home after the interview until twelve or half past, at midnight. She came to my house where I was living and stayed with me to dinner, and after dinner asked Mr. Waldron and myself to accompany her down to Mr. Waldron's room, and we finally consented to do so. It was a very unhappy scene. The plaintiff was very much excited during the interview. I think she felt very badly. She could still keep up the conversation as long as we were there. Mr. Waldron was not insanely drunk at that time. I think he understood perfectly what he was saying and what he was talking about. In my opinion, he was not crazy drunk, if I understand the meaning of that. I have never seen very much of that condition; it has not come into my life.

I was present in the house of Mrs. Alexander in May, 1887, at the time of the interview between the plaintiff and Mrs. Alexander. I can't say that I heard all the conversation, but I heard the greater part of it. I was upstairs. The doors were all open, but I could not possibly have heard her if she had not talked in a loud voice. I did not hear any criminating charges made by the plaintiff against the defendent in that conversation. She said she had heard that Mr. Waldron and Mrs. Alexander had been seen driving together. Mrs. Alexander said they had been driving a few times. Mrs. Alexander told her if driving with her husband made her at all unhappy she would not ride with him ann more. The plaintiff said, "Not at all," that it didn't, but that if Mrs. Alexander was the lady the plaintiff had always heard she was
364 *was* she did not think perhaps it would be well for her to bee seen driving with Mr. Waldron; that he was not a fit man to cross the threshold of her door. Mrs. Alexander replied that if she had a husband that was such a man as Mrs. Waldron represented Mr. Waldron to be she would live with him just long enough to pack her trunk and go. When the plaintiff was in the hall, about leaving, I heard every word of their conversation. She was in the hall øt the front door and she spoke very loudly. It was nearly ten o'clock, I remember—very late—and Mrs. Alexande asked Mrs. Waldron if she had any attendant or carriage outside. She said she had not. Mrs. Alexander said, "I would not go to the car alone at this time of the night, Mrs. Waldron; I should be afraid. Can I send one of my maids with you to the car?" Mrs. Waldron replying—she said she was not afraid. Mrs. Alexander was very kind when Mrs. Waldron left the house, as near as I could understand it. Mrs. Alexander said to the plaintiff that if riding with her husband caused her any trouble or annoyance she would not ride with him any more, and she said to Mrs. Waldron that if his calling at her house made her unhappy or if she didn't want Mr. Waldron to call there again that he should never come inside the house again. Mrs. Waldron said, "Not at all." That was not the object of her visit.

Any conversation that I ever had with Mrs. Waldron of a confi-

dential nature I have never repeated. What I have detailed here to-day has not been of a confidential nature, because Mrs. Waldron told the same things about her husband to everybody she called upon. I never at any time or under any circumstances attempted to influence Mr. Waldron in a manner that would cause him to leave his home and his wife, but I know Mrs. Waldron has said t
that many times. No one knows better than she that I have
365 always used my influence to get Mr. Waldron to go back
home until I came to Chicago. My idea of married people is that their place is together, and I have never talked to Mr. Waldron about his troubles at home—only in such a way as to try to persuade him to go home and stay at home.

Cross-examination.

By Mr. ALDRICH:

From what I observed of their conduct I think the plaintiff cared a great deal about her husband. I think she was deeply attached to him, and, so far as I know, that continued up to the time of their final separation. When she came here in July, 1886, she asked him if he was not coming home or if he would not go home. That was her first request. I do not remember that Mr. Waldron sent a note inviting us all to come there that evening. I think the plaintiff was a good deal excited that evening. It was a very unpleasant scene. She was very much excited and overwrought, and that continued up to the time we went away. This scene had not abated very much at the time we left at twelve o'clock at night. I don't know how long she remained in town after that. I didn't see her again that I remember of at that time.

I did not hear the testimony of the plaintiff when she said I wrote her a letter saying I was not in Mrs. Alexander's house at the time of her interview with Mrs. Alexander. I wrote Mrs. Waldron a letter, but what I said in that letter I do not remember. I always sympathized with her in her troubles. My sympathies were not against her, never, in regard to her husband, but as to thinking she always did right I never said so. (The witness is shown a letter
which she identifies as having been written by her to the
366 plaintiff.) A part of this letter refers to the same conversation as to which I have testified.

Counsel for the plaintiff offer in evidence a portion of the letter referred to.

To which counsel for the defendant objected; which objection was overruled by the court; to which ruling of the court —.

Said portion of the letter was as follows: "You said that if I did not hear the conversation between Mrs. Alexander and yourself that perhaps she told me. I did not hear it, for I was not where I could hear it, but she told me what passed between you and expressed a great deal of sympathy for you if Mr. Waldron had treated you as he said he had, and spoke very kindly of you to me."

(Witness resumes:) I did not hear all the conversation; in that

conversation with Mrs. Alexander Mrs. Waldron said a great many unkind and uncharitable things of me that were not true, as I stated in that letter. I knew Mrs. Waldron well and I did not propose that she should know I was in Mrs. Alexander's house or know anything about my business in Chicago; that was my object in writing that letter; when I am under oath on the stand as to whether I was in the house or not I tell the truth, but the way Mrs. Waldron has always talked about me, and I always tried to be her friend, I felt at that time I was perfectly justified in saying in the letter I was not in the house at the time. I did not say I was anywhere else. I said I was not where I could hear the conversation.

The first part of the letter there refers to the next morning. I had an engagement with Mrs. Waldron at my room. The statement, "I did not hear it, for I was not where I could hear
367 it," was not wholly true. I have stated my reasons for so writing to her. I did not want her to know I was at Mrs. Alexander's house or anything about what I was doing, because she had said a great many unkind things about me, and when she went home I didn't propose that she should know anything about my business; it was to avoid her making remarks about me.

I knew that if she knew I was in the house of Mrs. Alexander and heard what she had said about me, she would say unkind and untrue things about me, and that was what inspired the letter and the only thing that did so.

Testimony of Thomas L. Brannan.

Called on behalf of the defendant and examined by Mr. M'Coy:

My name is Thomas L. Brannan. I reside at Fostoria, Ohio. I have lived there three years next September, and prior to that time I lived at Bellevue, Ohio, about seventeen years. At the present time I am engaged in a stone quarry and lime business, the Fostoria Stone & Lime Company. I am the manager of that corporation and have been engaged in that business it will be three years next September.

Prior te that time I was engaged in the business of milling and handling grain.

I know Edward H. Waldron and know the plaintiff, Mary A. Waldron, his former wife. I am slightly acquainted with the defendant, the present wife of Mr. Waldron.

I became acquainted with Mr. Waldron early in 1882. At that time I was a partner in two flour mills at Bellevue, Ohio,
368 and handling grain along the different lines of railroad—the Lake Shore from Elyria, Ohio, through to Elkhart, Indiana; also handling grain along the Lake Erie & Western road while it was being built; as it progressed in the way of building through we followed along the line of the road to La Fayette, Indiana, and I became acquainted with him; he was at that time the general manager of that road. I think at one time we owned five elevators along the line of that road, and we owned four or five along the Lake Shore and two on the Ohio Central.

I first became acquainted with the plaintiff, the former wife of Mr. Waldron, some time during the summer of 1882. At that time Mr. Waldron had a private car or director's car, and I think the first time I ever saw the plaintiff was on that car coming from Muncie. She had come out on some other train to meet him and went back to La Fayette with him. My business was such as to take me over the line of the road a good deal. I had a great dael of buying of grain. We were handling sometimes as high as a hundred cars a day, and maybe more than that, and I was back and forth over the road constantly. I would usually meet Mr. Waldron somewhere along the line of the road when he was out on his car. He did not go out so very often, and I very frequently met him in La Fayette. I was at his home several times during those years. I presume I was in La Fayette as much as a week in every month during 1882 and 1883, and then finally went there and stayed three or four months at a time, and he would most generally take me out to his house or his barn. He had some fine stock, horses, chickens, and all kinds of animals out there. He would take me in his carriage and go out.

I became connected in business with Mr. Waldron just be-
369 fore the presidential election in the fall of 1884; prior to this time I had observed that their domestic relations were not pleasant; their seemed to be a disposition on her part to doubt his faithfulness; there seemed be something wrong with her all the time; finding fault. I can remember being in the car going over the road at times when their were other ladies in the car—respectable ladies—and she would sit down by the side of me and say, "I am so miserable, Mr. Brannan." I would say, "I don't see why you should be miserable, Mrs. Waldron, you have a nice husband, a nice boy, and a nice home. I should think you ought to be happy;" but there was something always in the way that she was not happy; there was a woman in the way. I don't know as it was the women that were along with us, but there seemed to be somebody he was paying too much attention to, or she supposed he was; 'most every time I met her she would discourse to me in this manner.

After I became connected in business with Mr. Waldron I was at their house frequently; we were handling grain and hay and making La Fayette our headquarters; we were buying hay of the farmers, and then taking the presses out and bailing it; we camped out in the fields and would come into La Fayette usually every Saturday night and remain till Sunday evening or Monday morning, and then return to camp; on these occasions I very frequently accompanied Mr. Waldron to his home; the first scene of discord that I observed between the plaintiff and Mr. Waldron on these occasions that I call to mind was a short time after we became engaged in the business together. I went with him one Saturday evening; he wished to put on clean clothes, and we would usually go down town; we had to go down town to take care of our financial department; make our money arrangements for the coming week; this
370 evening I had occasion to go up to the water closet. I was just at the top of the stairs, and he had his clothes all on, every-

thing but his coat and vest, and he asked Mrs. Waldron, I think, for a kiss. They were about at the door, and she told him he would come home and get fixed up nice and then go and kiss his girl down town. I did not see her kiss him. I did not stay there any longer than I could help. He got in the rig and went down town. I think we were doing to borrow a thousand dollars at the bank, and, instead of doing any business, I remember he went down town and got pretty drunk that evening.

I remember a subsequent occasion when we came in one Saturday evening and were not to go out until Monday morning, but on Sunday afternoon he came down to the Larh house, where I was stopping, and sent somebody after me, saying for me to get my traps and we would go out into the country, and I said, "What is up?" and he said, "Get your traps and come on and I will tell you." I went and got out my rubber coat and boots and things (it was raining) and we started out. We drove to Montmorency—I think it is a distance of about twelve miles—and we had not got far out of La Fayette before he told me——

Counsel for the plaintiff objected to the witness stating what was told him by Mr. Waldron.

The COURT: You need not state what was said.

And thereupon the court sustained said objection.

To which ruling of the court counsel for the defendant then and there duly excepted.

Q. Did you at that time learn of any intention on his part as to a termination or otherwise of his living with the plaintiff?

A. He said he would never live with her any more.

371 This matter of his living or not living with the plaintiff was thereafter the subject of discussion between Mr. Waldron and myself during that ride, and was the subject of discussion during the following and subsequent days. He was out there for about nine days before he went back to town, eight or nine days, and it was always his subject; he was talking about it all the time when we had the time. Prior to that time he had never discussed with me in any way the subject of his domestic relations.

I think about eight or nine days after that he came in to town again. It was the day before Blaine made his speech at La Fayette, and I think was somewhere about the 23rd of October, 1884. I think he came in to town the evening before Blaine was there, the evening of the 22nd of October. I next saw Mr. Waldron at his house lying with a broken limb. I did not accompany him to town on that occasion; I remained out at the hay camp to look after the business. I think I learned of the accident the evening of the day it occurred. I think it was Thursday, and I came into town the following Saturday evening. I don't think I saw Mr. Waldron until Sunday morning. He was then at his home. The plaintiff, Mrs. Waldron, was attending to her household duties, but some of the time she was present and some of the time she was out of the room while I was there.

At that time the subject was discussed between us about his being at home, after what he had previously said to me on the subject of his not returning, and there was some discussion between us on that subject.

Q. Did he give any expression at that time as to whether or not his return to his home was voluntary or otherwise?

Which question was objected to by counsel for the plaintiff;
372 which objection was sustained by the court; to which ruling of the court counsel for the defendant then and there duly exc-pted.

After this accident I continued my business relations with Mr. Waldron until, I think, early in March of the following year, 1885, we quit business. While I remained in business with him I would be out in the country the most of the time. Sometimes I would slip in if I wanted anything during the week, but generally I tried to come in Saturdays—Saturday night—to look over our business, as Mr. Waldron kept the books at his place. While he was lying in bed at home he kept the books. We had quite a number of men and teams and hay presses in our business, and while he was lying there in bed at home with a broken leg he kept the books. We had considerable in the way of accounts and finances to look after; and when I would come into town I would see him in connection with those matters. He made all the checks, and I would come there and get money to pay for the hay and pay the men. I got the money and came out and paid the people we bought goods of. During those visits it was always unpleasant there in the house; they were always scrapping, and there didn't seem to be the relation that ought to exist between man and wife. They did not pull hair, and strike one another, and things of that kind, but they were spatting all the time. It seemed to me mostly on her part. She was always finding fault with something he was doing. I didn't know what it was. There seemed to be some kind of a skeleton in the cupboard that I did not see. Something she was always finding fault about. Something he was doing. There seemed to be a Mrs. Scott at one time, and afterwards there was somebody else. I don't know whether I can just remember her name or not—Greenhouse, or something of that kind. I have seen Mrs. Scott. I
373 considered her to be a respectable lady.

I remember an instance that occurred after he began to get better, when he was going out of the house one evening in cold weather. He had been in town the evening before and said he was going that evening, and she had slipped out of the house for some cause or another, and she had a knit-wool arrangement called a "nubia" that he wound around his limb usually. Generally she wound it around for him; but this evening he was arranging it himself and she came in and snatched the nubia—he had wound it up above his knee—and gave him a shove and the chair fell over, and he went over on the floor; and she said she would not let him take her nubia to see some disreputable lady he was going to see. He fell on the floor. I helped him up. He went down town, too, and

got drunk. I could not tell how far his fractured limb had recovered at that time.

I remember another instance one morning when I was there and she was arranging the house and cleaning up around. I think I did not come in that morning until about eight or nine o'clock, and she was sweeping and he said something to her, and she called him a foul name, and said she would break the broom over his head or knock out his brains for two cents. That is one instance.

I think he always kept his revolver in bed with him, and another morning she got it from under his head and he made some remark—I don't know what brought it on—and she said, "For two cents I will blow your brains out," calling him something bad. She had the revolver in her hand. I was sitting on the other side of the bed and I hitched back a little. It was pointed over that way, and I didn't know whether it was done jokingly or not. She was kind of mad at something he had done previous. I could
374 always see when she was a little spunky—her eyes would snap and she would get excited.

I remember having a conversation with the plaintiff with reference to Mr. Waldron leaving the railroad. I am not positive whether it was just before he left his home the second time or it must have been along early in December after his leg was broken and before he had left his home and gone to the St. Nicholas hotel the second time, I think. It was on the Sabbath. I was at the house on that occasion by Mrs. Waldron's invitation. She invited me out there to dinner or breakfast, I could not say just which it was, and I went. Mr. Waldron was not at the table. Whether he was at the house I would not be positive. I don't remember. She sat herself at the table and wanted to know of me what I thought of her going to Chicago and consulting with Mr. Cummings with regard to his taking Mr. Waldron back. She referred to Mr. C. R. Cummings, the president of the railroad. She said she was satisfied Mr. Waldron would not do anything there the way he was doing, and she would like to get him back. She wanted to know what I thought about it. I said, "I don't know what to say about it, Mrs. Waldron. What influence would you have after what you have done previously?" Then I spoke of what she had done about her having been up here and brought her boy Winnie with her to Mr. Cummings, to his office over there in this brick building, and his saying to me that Mrs. Waldron was there with her little son, and sat right over there and cried, and told him so and so. I repeated to her the conversation I had with Mr. Cummings. I said to her, "I don't see how it could have much effect after you saying what you did to Mr. Cummings." I went on then and says, "You went up there to Chicago and took your
375 little boy with you, and told Mr. Cummings that Mr. Waldron was going over the road with lewd women in his car and that he was drinking badly, and begged Mr. Cummings to let him off of the road and let him go home with you where you could keep him straight," and I told her I didn't think after going up there to Mr. Cummings after that story she would have much effect.

She wanted to know if I had told Mr. Waldron about that. I told her I had. Said she, "Didn't you know you hadn't ought to?" I said, "Maybe I hadn't ought to, but then I don't think you ought to have gone up there and told Mr. Cummings that." I don't know whether I told her of how Mr. Cummings came to tell me this or not. I told Mr. Waldron how Mr. Cummings came to tell me of it. I think I told her I had been to Mr. Cummings to try to influence him to get Mr. Waldron back on the road.

I know Mr. Waldron left his home again and went to the St. Nicholas hotel. I could not give you the exact time. I think it was about the 8th of February, 1885; it was during that very cold weather.

Soon after his leaving on that occasion the subject of his intentions as to whether or not he would again live with the plaintiff was a matter of discussion between us, and he said he would never live with her again. I don't think I was ever there at their house after he returned home that September.

Cross-examination.

By Mr. ALDRICH:

I think I met the plaintiff, Mrs. Waldron, in Mr. Waldron's private car on two or three occasions. I don't think that she was jealous of any of the ladies who were in the car. I don't see
376 how she could be; but she was jealous of anybody that took any of Mr. Waldron's attention away from her—even the stock on the farm I think she was very much devoted to him, and I guess she wanted him all to herself. That was about it.

My deposition was taken heretofore in this case. It is a fact that Mr. Cummings told me Mrs. Waldron had been to Chicago to see him, and complained that Mr. Waldron was taking people of doubtful reputation over the line in his private car. I think that interview was about the commencement of our hay business, along in September or October. That was after Mr. Waldron left the railroad. He left the railroad in July. I came here to see Mr. Cummings on that occasion. The interview took place right over there in the National Bank building, where Mr. Cummings had an office. I don't know whether he has it there now. He had then. Mr. William S. Howard, the contractor, was in his office at the same time.

I never was very intimately acquainted with Mr. Cummings. I had helped him a little down in Ohio in getting his right of way. I never had any difficulty with him that I know of.

Testimony of Mrs. Josephine P. Waldron, the Defendant.

Called in her own behalf and examined by Mr. WALKER:

I have lived in Chicago since October, 1857, continuously. I was married to Mr. Alexander on the 23rd day of September, 1857, and

we came here directly. At the time we were married Mr.
377 Alexander was one of the firm of George W. Flanders & Company, in the wholesale grocery business.

I remember his last illness perfectly, in 1885 and 1886, and when he went to Louisville for treatment. I think Mr. Alexander was very ill from the first of December, 1885, until the time he went to Louisville. It was a serious illness and so considered at the time. It proved to be a fatal illness.

I could not give the exact number of times Mr. Waldron was here during that illness, but from the first time Mr. Waldron came up—I think it was on a Saturday that Mr. Alexander asked me to telegraph Mr. Waldron to come to Chicago and pass the Sunday with him. Whether the dispatch was written in my name or sent in Mr. Alexander's name I would not say as to that. I did not send any telegrams to Mr. Waldron at that time except by the direction of Mr. Alexander. When telegraphed for Mr. Waldron would come here and spend a day or a night and then return to La Fayette.

I never saw Mr. Waldron after Mr. Alexander left for Louisville until he came here to attend Mr. Alexander's funeral. He never was in Chicago, to my knowledge, during that time, and he certainly was never at my house. Mr. Alexander died on the 23rd day of February, 1886. The funeral services were at my house on the 25th day of February and were conducted by Bishop M'Claren, of Illinois.

During his last illness Mr. Alexander had Henry Kirtland as his nurse, the man who was a witness here and the former butler in our house.

Prior to his being called in as attendant on Mr. Alexander during his last illness I think Henry Kirtland was with us at one time
378 for about two years, after which he left us, and, I think, went out as valet to the Dickey brothers, one of whom has since died. At that time they were living on Dearborn avenue, on the North Side. At that time he was discharged from our service. I had a dinner party the night before, and it was always the rule that certain pieces of the china set should have little pieces of cotton flannel put in between the plates to keep them from chipping, and I went down-stairs that day after lunch to look at my dining-room, and found the dishes were put into the closet in a helter-skelter manner, so I took them down myself and arranged them, and I heard Henry come into the kitchen and ask the cook who was in the dining-room, and the slide was open into the butler's pantry. Henry had been drinking at that time, and the cook said, Mrs. Alexander was in there. He did not come into the dining-room. I did not see him afterwards. He went away, and I did not send for him to come back.

I went to Louisville before the return of Mr. Alexander at the request of Dr. Yandau. (Witness produces a telegram.) This is the original dispatch Dr. Yandau sent me to come to Louisville for my husband. He was doctoring Mr. Alexander. The telegram is dated the 20th of February.

No one accompanied me when I went to Louisville. Henry

Kirtland was there when I reached Louisville, and a colored nurse who had been hired for the occasion, I think, recommended by Dr. Yandau.

I reached home with Mr. Alexander on the morning of the 22nd of February. I think it was on a Monday morning. I don't think he was conscious when we reached home, and consciousness was not restored prior to his death. Mr. Alexander was buried at Brattleboro', Vermont. He was born in Chesterville, New Hampshire, but his family had moved to Brattleboro' many years
379 before, and they owned a family lot there, and Mr. Alexander had bought and added to that lot, and it was his request, if he should die before I did, he should be buried in Brattleboro', and I carried out that request as near as possible. Mrs. William B. Howard, Mrs. Wickersham, Mr. Frank Alexander, my husband's brother, and Henry Kirtland accompanied me from Chicago to Brattleboro' on that occasion of the burial.

The morning after my return from Brattleboro' I gave directions to Mr. Lennebacher that I would like to have Mr. Alexander's father have such of his clothes as he thought would be of service to him. It was his overcoats and his wearing apparel generally, which would be of no service to anybody else, and I had Mr. Lennebacher see to having them packed and shipped. I had the things gotten together and Mr. Lennebacher took them down to John Deeres, a tailor, in Chicago, who then had a shop on Monroe street, under the Palmer house, and the clothing was sent to Mr. Alexander's father; such of the clothing as I though would be of use. I could not enumerate what there was, but I know it was his overcoats and clothing that Mr. Alexander had—the better part of his clothing that I knew would be of use to his father, as they were about the same size.

I sent a picture of Mr. Alexander to his father; it was a crayon picture executed by an amateur artist here, whose husband was a friend of Mr. Alexander's, by the name of Woodbury, and I sent that picture to Mr. Alexander's father by his written request. (Witness produces a letter.) This is the letter he wrote me, asking for it, just after I returned from Brattleboro'. The date on the envelope is March 11th, 1886. There were two other pictures of Mr. Alexander in my house; the best one I have myself and have always kept; the other was given to my friend, Mrs. J. C. Guthrie,
380 with mine at the same time. It was not as good a likeness as the one that I have. Mr. and Mrs. Guthrie were old, warm friends of ours while in Chicago, and the acquaintance and friendship has always extended ever since until Mr. Guthrie died, since the first of January of this year.

I sent all the better part of Mr. Alexander's clothing to his father, as in every gentleman's wardrobe there were things that were of no use to me, but the only thing that Henry asked for particularly were two pairs of embroidered suspenders. I did not look in Mr. Alexander's dressing case from the day he died until the night I went East, and then I went to the bureau before I went away to look at some things and for some things to put away. I remember

the drawer was so completely riddled of everything that belonged to Mr. Alexander there was nothing left for me to give away. That was the night I went East with Mr. Alexander's remains.

I never gave Henry Kirtland any teeth, false teeth, a set in a gold plate, or any teeth of any kind of Mr. Alexander's. I don't know that I missed the false teeth when I went to the drawer of Mr. Alexander's dressing case the night before I went East. Those teeth that Mr. Alexander did not use were kept in a box there, and as I looked into the drawer that night I saw that everything was gone, and don't remember whether the box was there or not. I have never seen them since then.

I never had any conversation with Henry Kirtland at all about those articles of apparel and those teeth. I never told him to take them away or thought I didn't want them.

I could not tell the exact time that I first saw Mr. Waldron after I returned from the East, from the burial of Mr. Alexander. The first time I saw him was in the private office of Mr. Walker,
381 my solicitor, and the particular business connected with the estate considered at that time was this:

Mr. Alexander had asked Mr. Waldron to attend to the matters pertaining to the farm and see to the stock. Mr. Waldron had originally bought the stock for that farm for Mr. Alexander, and the matter was referred to Mr. Walker, and I had several conversations with him about it, and I think Mr. Waldron was present at most of those conversations and at some he was not present. It was a matter I knew nothing about at all and which I left entirely to Mr. Walker and Mr. Waldron.

After my return from Brattleboro', from the funeral of Mr. Alexander, Henry Kirtland did not remain with me at all and he was not in my service in any capacity after that time. We left Chicago on the 25th day of February, 1886, going East to the funeral, and after that was over I went to New York with Mrs. William B. Howard and stayed there a short time. Henry Kirtland went with us, and Mrs. Wickersham, and stayed in New York while we were there. We all got back to Chicago about the 5th of March. The morning we reached Chicago Mr. Lennebacher met me at the station with my carriage, and Henry Kirtland asked the privilege of riding on the box of the carriage to the house, which I granted; and I think he came into the house after that and stayed there some time during that forenoon, and I told him to go to Mr. Walker's house and make his report as to the expenses he had been at during our trip and get from Mr. Walker what money was due him. I never saw the bill that he rendered to Mr. Walker. I know his handwriting. (The witness is shown a bill by Mr. Walker.) I don't think Mr. Walker ever showed me the bill; in fact, I don't think I ever had any conversation with him about it. The signature to the bill looks
382 like Henry Kirtland's writing. I know nothing about our expenditures when we went East at all. Henry Kirtland paid all the bills for the party while we were gone.

Counsel for the defendant offers in evidence the bill referred to, and it is as follows:

——.

383 During the months of March, April, May, and June of 1866 Henry Kirtland was not in my service. I remember perfectly the occasion of my illness in the year 1886. Henry Kirtland was not a nurse for me during my illness and did not assist in my treatment at all, to my knowledge. I don't remember of his ever performing this massage treatment—rubbing treatment—for me at all, and I think I would remember it. I have no knowledge of his rendering any such service to me. He never did rub my limbs.

I think he was about the house during my illness, and he rendered me a bill for his services during that time. That is the bill that was presented and offered in evidence here.

From the time I returned from Brattleboro' and New York, after the funeral, and up to the time of my illness, I cannot state how often Mr. Waldron was at my residence. He was not staying in the house during that time. He did not make his home there. If he was there at all he was simply calling.

During the time of my illness I do not remember when he came to the house. I remember the time Dr. Ware told me I was a very sick woman, and that as Mr. Walker was out of the city it would be necessary for some one to act in case it should terminate fatally. There would have to be some arrangement made in regard to my affairs, and I suppose that is the reason Mr. Waldron was sent for. I don't think Mr. Waldron was there all the time. I think I was so ill that I required the services of a physician between three and four weeks as near as I can remember. I was taken ill on the 17t- day of July, 1886. I do not know on what day I left for the East, but it was some time in August. My medical attendants told me to go directly to the seashore, and I went in pursuance of that advice. Mrs. Wickersham and Mr. Waldron went with me.

384 We stopped at the Oriental hotel. The first persons I saw there were Mr. and Mrs. Sam. Turner, of the Grand Pacific hotel, and after that Mrs. Judson, who formerly lived here, and was staying in New York. Mr. Sam. Turner was one of Mr. Alexander's oldest friends, and Mrs. Turner and I had always been friendly, and they visited with me, having a calling acquaintance, etc. I knew Mr. Judson many years ago, before the Chicago fire, when he was with Marshall Field & Company. He had only been married a short time. My sister and her husband and two daughters visited me while I was at the Oriental hotel. They reside in Springfield, Massachusetts. My sister's husband is named John Mackensie Smith.

While I was ill Mrs. Robert Roloson used to come and sit with me a great deal during the day, when I was so that I was able to know anything. She resides at 2109 Prairie avenue. Her mother was here in the court-room with me the other day. I have known Mrs. Roloson ever since she lived here in Chicago. During my illness Mrs. W. S. Studebaker was with me a great deal. She resided at that time at 1612 Prairie avenue. These two ladies were with me most of the time during the day. I was not well enough to have anybody stay with me any length of time, but my friend, Mrs.

Guthrie, was a constant attendant. She came just as soon after my illness, as they knew I was dangerously ill. The night they tho't I would not live through the night she telegraphed to Mr. Guthrie and he came on. Mr. Waldron was there also. There was no concealment of his being there that I was aware of. I have no remembrance of speaking to him or using any terms of endearment such as "I love you," and so on, while I was sick. Mr. Waldron never laid on the outside of my bed when I was sick. If Mr. Waldron came into my house by way of the stable he would
385 be in plain view of my neighbors, Mr. Bigelow and Mr. Henry, and all their help and all my servants. I usually have three servants in my own house, and they would remain, and there were two in the stable. My cook was always in the kitchen, and it was impossible to go through there unless she saw him. You would have to pass clear through the house to go in that way. The dining-room at that time was in the front room in the basement. The stairs from the front hall on the parlor floor led down to the dining-room. In passing through the house from the stable to reach the second floor you would have to go into the basement and through the servants' dining-room, the kitchen, the basement hall, past the dining-room, and then go upstairs, passing through the whole house, in fact, to get to the stairs that led up to the parlor floor.

I never paid Henry Kirtland for any services that he rendered or claims that he presented for his services from the time of my getting back from the funeral down to the time that I was ill. He was not in my employ after my return from the funeral and did not render any service to me until the time of my illness. He was never a messenger carrying notes between me and Mr. Waldron. I don't remember of ever sending notes by Henry Kirtland to Mr. Waldron. I remember at one time I sent a butcher's bill that came to Mr. Waldron, but I don't think I sent it by Henry Kirtland. I think it was sent by Marius, the coachman, probably. I did not see Henry Kirtland during that time and I don't know of his calling at my house to receive directions from Mr. Waldron about business matters. I have no knowledge of his calling for any purpose. He never called at my request and took messages from me to any person.

Henry Kirtland has never lived with me since the time I came back from Brattleboro', Vermont, at the time I buried my husband.

386 I don't think I ever went driving with Mr. Waldron more than four or five times, and then it was in open daylight, in an open carriage, not in any brougham or closed carriage. At that time Marius Casparson was the coachman.

I remember perfectly the occasion when we were driving with Marius as the coachman and the horse stopped in Lincoln park. We were driving along when the horse stopped. We hadn't left the carriage and gone around strolling in the park for half an hour before the horse stopped. I am not fond of walking in the park. Marius was very ugly to the horse. I had cau-

tioned him several times before about abusing my horse. He was a man of a violent temper. He took out the whip and commenced to whip the horse, and as he did so I got out of the carriage and walked away. There was a conversation between Mr. Waldron and the coachman, but what the conversation was exactly I could not tell, because I walked away and left them.

When we did not drive to Lincoln park we usually drove down Michigan and 35th Street boulevards, taking the drive that led to the South parks.

We never were driving in the evening. It was in the summer, and at that time the driving hour was about half past four or from that to five. I did not hear Marius Casparson's testimony, and have not read it. I did not speak to Mr. Waldron in terms of endearment—expressions of love and affection—in Marius' presence or any other person's presence at all until after my engagement of marriage to Mr. Waldron.

The furnaces that were in the house at that time are there now. There is a cellar under the basement dining-room where the
387 furnace is situated. There is also a small furnace in the servants' dining-room; the small furnace is never lighted unless the weather is extremely cold. I do not remember of any occasion when Mr. Waldron and I had been driving and we drove into the stable and came into the basement of the house and Marius followed us immediately for the purpose of fixing the fire in the furnace. If I went driving with Mr. Waldron it was in an open carriage. The usual times for starting the fires in the furnaces in my house is about the first of November. I put it off as long as I can always. I do not ride in my open carriage when it is cold enough to have fire in the furnace. I certainly have not within the last five or six years. My throat has been in a bad condition and I have not done that.

I did not, at any time in the autumn or fall of 1886, or at any time after driving with Mr. Waldron, pass into the house thro'- the basement and into the servants' dining-room and there embrace and kiss Mr. Waldron.

The servants' dining-room is directly off the kitchen. There is a door between the servants' dining-room and kitchen, but it has never been shut that I know of since I have lived in the house. It is never closed, and the rooms are immediately adjoining.

Mrs. Wickersham, whom I have mentioned, has four children. She has been an attendant of mine ten years this coming March. When I went East to attend the burial of my husband she went with me. Before the death of Mr. Alexander she used to go with me when I went to Saratoga without Mr. Alexander. For years, when I went away from home she went with me, and I had no other attendant.

My coachman, Marius, wore livery—a coachman's coat and hat. After driving, it was my rule that the horses should not be left standing on the floor. I have always taken charge of my
388 stable for years, and that was my standing rule that the horses must be taken from the carriage as soon as I came in.

It was impossible for Marius to have taken the horses out of the carriage and come in in the way that has been stated. When I am out driving I am in the habit of very frequently getting out of the carriage in my stable. Never to my knowledge, while Marius was my coachman, did he leave his horses standing on the barn floor and follow me immediately into the house.

I was not ill at all from the time I came from Brattleboro', in March, 1886, until in July of that year, and no physicians called to see me at all during that time.

I do know the electrician O'Neil who worked for me. I would not know him if I met him to-day. He had charge of the electric bells in the house for a time, but I could not tell you how long.

I remember going to the depot in the fall of 1887 and meeting Mr. Waldron. He had been to Montana with Mr. Charles T. Howe, of Chicago. It was about the very last of September when I met him at the depot. I married Mr. Waldron on the 25th of October, 1887. We entered into a marriage engagement just before Mr. Waldron left for Montana. I would not give the exact date, but I should say somewhere about the last of August; between the 25th and the time he went away. I don't know what day it was he left for Montana. When he returned and I met him at the train I was engaged to be married to Mr. Waldron. He did not take breakfast with me that morning.

At the time Mr. Waldron returned from Montana I occupied the same room as a sleeping-room that I occupy now. It is the room over my back parlor; the first room back from the front chamber on the floor above the parlor floor. The front room on that
389 floor is my sitting-room. There is an alcove in it. The bed was taken from it at the time I commenced to fix my house. I think about the first of July. I could not give the exact time.

Prior to my marriage with Mr. Waldron I never went with him into my sleeping-room and locked the door. The servant maid who had charge of my sleeping-room and that floor was a girl by the name of Annie Cummings; she had lived with me for ten years and had general charge of the rooms from the time I moved into my present home until after Mr. Alexander's death. Annie Cummings was my house-keeper and had charge of the entire house and general supervision of everything; she always had access to my rooms and would go there at any time she wished; she is living in Chicago at the present time and is now in my service; she is now married; she was there in 1887 when these improvements were going on.

Annie married after I married Mr. Waldron. I think it was several months after, if I am not mistaken. I think it was the last of November.

When Mr. Waldron stayed at my house over night he occupied the guest-room, the front room on the top story; he never, at any time before our marriage, occupied a room on the second floor.

My first acquaintance with the plaintiff has been since I moved to my present residence. I could not tell how many years that is. I never saw Mr. Waldron during my illness or at any other time in my sleeping-room in his dressing gown. I have lived in my

present residence ten years last August, and it was since that that I met the plaintiff for the first time.

I became engaged to be married to Mr. Waldron about the last of August, 1887; prior to that time there never was anything said between Mr. Waldron and me about marriage; there never
390 was any understanding and that matter was never discussed or talked between us, or that he should get a divorce from his wife and then would marry me.

Q. I will ask you generally whether during the entire time from the death of Mr. Alexander on down to the present time there have been any acts of impropriety of any kind or character, either by word or act, between you and Mr. Waldron?

A. There has not.

Q. Was he in the habit of visiting you during the summer of 1886 and the winter of 1886 and 1887 down to the time of the marriage and down to the present time secretly or clandestinely?

A. Never.

Whenever Mr. Waldron called there in the evening he always came to the front door, and if he came through the stable it was in the daytime. During that time, whenever I had a card party or anything of that kind in the evening, I invited Mr. Waldron as I did other friends; and he met other gentlemen friends, as well as their wives and lady friends there. There was no concealment or attempted concealment of his presence there. There was nothing to conceal.

The divorce proceedings were not discussed between me and Mr. Waldron prior to the time the divorce was obtained. I did not lend any aid or assistance or advice in any way about the procurement of any divorce between Mr. Waldron and the plaintiff. I was not consulted in regard to it or talked to about it by any person, and I am not conscious of any act towards Mr. Waldron in my whole life that would tend to alienate his affections from the plaintiff before that divorce.

Next to Mr. Walker, Mr. Waldron was my husband's warmest and most intimate friend, and frequently visited him. He
391 was in the habit of coming to my house, I should think, for fully fourteen years.

I had an interview with the plaintiff in 1887—I think in May or June—at my home. She called upon me in the evening; I don't remember the hour; I know the gas was lighted when she came. When she called there Mrs. Emory Waldron was with me. We were in my sitting-room upstairs; the front room—the alcove room. That was used as a family sitting-room always. I have no other.

I went down to the drawing-room alone and met the plaintiff. She did not manifest any strong feeling or state of excitement that I know of. I think the first thing she said was that she thought Mrs. Emory Waldron and her husband were entitled to a share of the responsibility for her unhappy married life, and asked me if I saw very much of Mrs. Emory Waldron, and then she asked me if I saw Mr. Waldron, and she told me she had heard that Mr. Waldron had been driving with me. She told me that although he had been

to my house a great many years with Mr. Alexander I probably did not know what kind of a man Mr. Waldron was; that he was drinking a great deal and he had very bad habits, and that she did not think he was a fit person to call on any lady. I asked Mrs. Waldron if it made her unhappy because she knew that Mr. Waldron had ridden with me, and she said, "Not at all." I said, "If it makes any difference to you I promise you that Mr. Waldron shall never cross the threshold of my door again," and she then went on and told me Mr. Waldron's habits—how she had been annoyed and her unhappy domestic life—but still she told me she loved him. During this conversation there were callers came in; I can't tell at what stage of the conversation. The first people that came in were Mr. Cochran, an architect here in Chicago, who has since died, and his little daughter. The conversation stopped then.

392 The plaintiff did not ask permission to retire from the room when they came in. She made no such remark as that she would like to retire and not meet strangers there with her tear-stained face.

I can't tell how long they stayed. The little girl came for a purpose, and I excused myself. She had promised to come to see my dogs, and I called them up and took the little girl down-stairs, and while we were away no conversation was had. After they went out the conversation was resumed again. I don't remember where it stopped.

Mrs. Waldron told me how unhappy she was—how miserable Mr. Waldron had made her life—and I think I made the remark, when she said she loved him, etc., "Well, Mrs. Waldron, if I had a husband that treated me like that I should live just long enough with him to pack my trunk and go." We had a little more conversation, and after that Mr. and Mrs. M'Birney, of Prairie avenue, came in to make a call. They had been at my house at a card party and came to make their return call. They only stayed a few minutes—simply a formal call. After they went away the plaintiff stepped into the hall. I should judge it was somewhere between nine and ten o'clock at night. There was some conversation in the hall in regard to her trouble, and we went to the door. I asked her if she had a carriage or any escort. She said she had none. I asked her to allow me to send one of my maids to the cars with her, but she declined, saying she was not afraid. I don't think there was any other conversation of any nature. She shook hands with me and went away.

She did not, in that conversation, charge me with alienating the affections of her husband, nor make any charge against me for harboring her husband, nor any charge of any kind or

393 character in connection with her husband. She did not say to me that she considered I was responsible for his leaving her. She told me Mrs. Emory Waldron was responsible for his leaving. I said to her that if his calling upon me or driving with me caused her any unhappiness it should stop, and he should never cross the threshold of my door again; and she said, "Not at all."

I did not at that time know anything about any contemplated

proceedings for divorce between these people. This interview, I think, was in May, 1886.

The first I knew of the charges the plaintiff made against me of alienating the affections of her husband and of impropriety of conduct was when a man forced himself into my bed-room and read to me a summons or notice of a suit that was brought against me. The next morning I saw a statement in the Chicago Tribune headed, "Quarrel of divorced women." I was not a divorced woman and didn't think it was myself.

Counsel for the defendant presents to the witness a copy of the Chicago Tribune of June 7th, 1888, containing the article in question, which is identified by the witness, and the article is offered in evidence and is as follows:

Wants $100,000 damages.

The suit of Mary against Josephine Waldron. Quarrel of divorced women.

Mary Waldron, of La Fayette, Ind., began suit yesterday in the Federal court against Josephine P. Waldron, of Chicago, for damages in the sum of $1,000,000. The papers were suppressed for service.

Charles H. Aldrich, the attorney who began the suit, is out
394 of the city. The case is a peculiar one, and the action is perhaps the first of its kind brought in this city. In fact but few are known in the records, although two or three similar actions have been brought during the last year in different parts of the country. Mary Waldron is the divorced wife of Edward H. Waldron, a well-known resident of La Fayette, who is perhaps equally well known in Chicago, especially in railroad circles. Josephine P. Waldron is his present wife, and before her marriage to Waldron was the widow of Elijah S. Alexander, well known as the "three-ace" paint manufacturer, who died in February, 1886, and left his widow a large fortune, said to have been $800,000. The ex-wife sues her successor for alienating her husband's affections.

Edward H. Waldron, so the story goes, was a telegraph operator at La Fayette, Ind., when he married his first wife, Mary. They lived together for twenty-two years and prospered until Waldron was quite well off and occupied a high official position in a railroad company whose line enters Chicago. His duties brought him frequently to Chicago, and here he met wife No. 2, though whether he made her acquaintance before the death of her husband or afterward does not appear. At any rate, it was not long after her husband's death before Waldron's attentions to her became quite marked and their intimacy a matter of comment. Waldron about this time grew dissipated and lost his means, as well as his official position, for which, it is said, he blamed, unjustly, his wife. About two years ago Mrs. Waldron No. 1 could stand his neglect no longer and obtained a divorce from him in June, 1887, at La Fayette, the ground being his bad habits and his connection with the widow. His marriage with Mrs. Waldron No. 2 took place shortly

afterwards and is said to have been performed in Columbus,
395 O. They are now said to be living in great style in Chicago, the paint manufacturer's money still holding out in plenty.

The first wife is said to be in delicate health, the result of her troubles, and dependent upon the earnings of a son, who is engaged in business in this city. He owes his position, it is said, to his father's influence, but his sympathies are all with his mother. Wife No. 2 is said to be a younger woman than her predecessor, and of great physical charms, to say nothing of her wealth.

A reporter called at the Waldron residence last evening, but was informed that the present Mrs. Waldron had no knowledge of any Mary Waldron, nor could she imagine any cause for a suit being brought against her by such a person. Her attorney, who was present, tried to make out that, inasmuch as it was an action for trespass on the case, it must have reference to some real-estate matters, as Mrs. Josephine Waldron had considerable property in real estate.

"When did the former Mrs. Waldron obtain her divorce?" asked the reporter.

"O, that was a long time ago, in some Eastern city, but this has nothing to do with any such affair, I assure you," replied the attorney.

Mrs. Mary Waldron's Statement.

La Fayette, Ind., June 6 (special).—Mrs. Mary Waldron, of this city, who has brought suit against Mrs. Josephine Waldron, of Chicago, charging her with alienating the affections of her husband, was seen this morning. She declined to make any statement as to particulars other than that about one year ago she was, almost
396 by compulsion, required to apply for and was granted a divorce from Waldron, and that certain agreements made at the time had not been fulfilled. It was then agreed that certain debts against the Waldron property here should be cleared off and the property turned over to her. This has not been done. She has no means to clear the property and intends pushing a suit against the present Mrs. Waldron for alienating Mr. Waldron's affections. The reporter asked Mrs. Waldron if the name of the defendant in this case, formerly Josephine Alexander, was mentioned in the complaint for divorce, and she replied, "Yes; quite prominently." She declined to make any statement of details. The divorce decree was granted about one year ago. The papers were withdrawn as soon as filed and the contents never made public. Waldron was for several years general manager of the Lake Erie & Western railway.

The witness is handed a copy of the Chicago Times of June 8th, 1888, and states that she identifies an article therein as one she saw in that paper at that date; which article was offered in evidence and is as follows:

397 Divorce didn't end it.

The former wife of Edward H. Waldron appeals to the courts a second time.

She brings suit for $100,000 damages against the ex-husband and his present wife.

Society curious to know upon what ground the first Mrs. Waldron bases her big claim.

South Side society is just dying with curiosity to know exactly what the charges are that will be brought against Mr. and Mrs. Edward H. Waldron by Mr. Waldron's divorced wife Mary; that the sumptuously furnished mansion at 2028 Michigan avenue contained a very large-sized skeleton hid from curious eyes in the darkest of closets had not been imagined. When the handsome widow of the dead millionaire E. S. Alexander threw aside her mourning habiliments for glistening bridal robes, society was not in the least surprised. Mrs. Alexander had sincerely mourned her husband's loss for over eighteen months. It was not to be supposed that a young, rich, and handsome widow would spend the remainder of her days in seclusion. Of course it was known that Mr. Waldron, the second choice of Mrs. Alexander, was a divorced man, but then nearly a million of money proved a shield, and no word of unpleasant gossip reached the ears of the newly made bride and groom.

So it came to pass that the receptions, dinners, and teas over which Mrs. Waldron presided so charmingly were well attended. As the months rolled by Mr. Waldron's former marriage dropped from the memory of all save one, and that was Mrs. Waldron No. 1.

398 Day after day and night after night she sat by her lonely hearthstone and brooded over her troubles. Grief and shame finally changed to hatred and a consuming wish for revenge. She pictured to herself the sharer of her joys and sorrows for nearly twenty years and the father of her child revelling in luxuries bought with another's gold; and as she thought the more intense grew her hatred. She believed that the blandishments of the lovely widow had alienated her husband's affections.

Then she consulted an attorney, and in writing made the allegations on which is based the demand for damages in the sum of $100,000.

"I want this woman to suffer as much as I do. How can I best accomplish it?" asked the divorced wife.

"Sue her," was the reply.

"I'll do it; make the damages big; that will touch her heart."

The plaintiff's story is as follows: On June 6, 1886, her husband deserted her. For nearly a year prior to that he had seemed changed. Finally her suspicions were aroused, and she found that Mr. Waldron and Mrs. Alexander were exceedingly fond of each other's society. She remonstrated in vain, and finally came the rupture and Mr. Waldron left her. She waited nearly a year, and then bro't suit for a divorce alleging desertion. The trial took

place in La Fayette, Ind. There was no contest and but one witness was sworn. He was a man closely connected with the defendant, and his testimony bore out the allegations of the defendant. Mrs. Waldron was granted a decree with alimony. She did not pray that her maiden name be given back to her.

Mr. Waldron and Mrs. Alexander were married at Columbus, O., Oct. 21, 1887. The bride to be had preceded her lover by a
399 day or two. In her bill of particulars, not yet filed, the plaintiff makes some startling allegations.

Mr. Waldron was seen yesterday. He is confined to his room and is engaged in nursing a badly scalded foot. He received his visitor courteously, but said that he must decline to talk on the subject of the suit for the reason that he did not know the allegations on which the action was based. He was informed. As he listened to the strong language of the plaintiff as repeated by the reporter Mr. Waldron's face wore an amused and half-contemptuous smile. When the whole tale had been unfolded he said:

"I must again decline to be interviewed, and must refer you to my wife's attorneys, A & C. B. McCoy. Whatever they choose to tell you will be concurred in by Mrs. Waldron and myself. I will say this much, however: There will be no effort to stop this case. If one dollar would cause the plaintiff to withdraw the suit I would not give it to her. We are anxious that the trial should be called just as early as possible. It will be contested to the bitter end, and we are confident that we will not be the sufferers."

Mrs. Waldron was indisposed and could not be seen.

Both of the Mr. McCoys professed to be in ignorance of what the charges were. They also were informed. Charles McCoy said that the allegations were entirely false. Mrs. Waldron by word or deed had never done aught to offend propriety.

"She is a splendid woman," he continued, "and is as good as she is beautiful. She is noted for her charities, and if there was ever a pure woman it is Mrs. Waldron. These charges are preposterous."

"Will any effort be made to settle the case?"

400 "Most certainly not. Why, that would be a confession that the horrible charges were true."

"What will be the nature of your answer to the complaint?"

"We shall not enter into specifications; we shall simply file a general denial."

Charles A. Aldrich, the plaintiff's attorney, is still out of the city. His chief clerk, Mr. Thompson, talked freely on the subject. He said that they would substantiate every charge, and had overwhelming proof of their truth.

La Fayette, Ind., June 7.—The publication in this morning's Times of the damage suit of Mrs. Mary A. Waldron, of this city, against Mrs. Josephine Alexander Waldron, of Chicago, created a town talk. The grounds upon which Mrs. Mary Waldron obtained a divorce from Edward Waldron are given as follows in the complaint, filed June 20th, 1887: "The plaintiff, Mary A. Waldron, avers that the said defendant, Edward H. Waldron, has not been to

said plaintiff a good, faithful, and kind husband, but she charges, on the contrary, that he has been unmindful and broken his marital vows, in this, to wit, that he has for more than a year past been guilty of cruel and inhuman treatment of this plaintiff, in this, that he has become enamoured of one Josephine P. Alexander, and that the said Josephine P. Alexander, as plaintiff believes, reciprocates his wishes, and now, through her enticement, has so alienated from the plaintiff that he refuses, and for the last year has refused, to return to his home or to this plaintiff, and also refuses to provide for this plaintiff's support, but, on the contrary, has absolutely refused so to do; * * * that plaintiff charges, and believes it to be true, that defendant's sole and only purpose for
401 so doing is induced by his attachment to said Josephine, and that, at his own instance or at her instance, he has pursued such a course of treatment toward this plaintiff as to make it intolerable any longer to endure with safety to her health and life."

Mr. Waldron, by attorney, entered a general denial, but he did not appear to fight the application. Mrs. Mary Waldron, of this city, declines to make any statements for publication other than to say that for nearly twenty years she and her husband lived happily together until drink caused him to change. Mrs. Waldron says she was importuned to bring the proceedings for divorce, and when she did it she foresaw the outcome and charged her husband with a desire to be free from her so he could marry the wealthy Mrs. Alexander. This he denied, yet, she added mournfully, in four months after the divorce was granted they were married. Against Waldron she makes no complaint, attributing all her troubles to drink and Mrs. Alexander's money. As to her getting everything Waldron had, she says he had nothing when they were married, and her savings were the nucleus from which their start was made. The court gave her $10,000 alimony, and by agreement she was to have the homestead. The alimony was represented by Waldron's individual notes, but there is a mortgage on the home which he promised to lift, but has not done.

Thereupon counsel for the defendant offered in evidence the precipe filed in said cause on June 5th, 1888, upon which the summons was issued. Said precipe, with the date of the filing thereon endorsed, was as follows:

402 *Præcipe.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court, July Term, A. D. 1888.

MARY WALDRON, Plaintiff, }
vs. } Damages, $100,000.00.
JOSEPHINE P. WALDRON, Defendant. }

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case, to the damage

of said plaintiff in the sum of one hundred thousand dollars, and direct the same to the marshall of the United States of America for the northern district of Illinois to execute, and make it returnable to the July term of said court, A. D. 1888.

CHARLES H. ALDRICH,
Plaintiff's Attorney.

William H. Bradley, Esq., clerk U. S. cir. c't.

(Endorsed:) Filed June 5, 1888. Wm. H. Bradley, clerk.

403 Thereupon counsel for the defendant also offered in evidence the date of the filing of the declaration in this case, which was June 30th, 1888.

(Witness resumes:) I remember perfectly the date of the service of the summons upon me. I think it was the 6th of June, 1888. Through these articles in the newspapers I learned for the first time that I was charged with misconduct with Mr. Waldron. I had never heard of it before. After reading these first articles I did not watch the newspapers to see what did appear in them with relation to my conduct with Mr. Waldron. I thought the first articles were sufficient to stop on.

I had no knowledge of any charges made against me or any charge that Mr. Waldron had become enamored of me in the petition of the plaintiff in the divorce proceeding at La Fayette; I did not know anything about it at all; I knew nothing about the divorce proceedings at all until after the decree was entered and the whole matter closed.

I did receive a letter from O'Neil, the electrician, relating to the matter pending between me and the plaintiff. I have the letter in my hand. I don't say it is from O'Neil, but I think it was and was written in Mr. O'Neil's interest.

(The witness identifies the letter. Counsel for the defendant offered in evidence the letter referred to; to the introduction of which letter in evidence counsel for the plaintiff then and there objected as being incompetent and immaterial. The objection was sustained by the court.)

Said letter so offered in evidence and the objection to the introduction of which in evidence was sustained by the court is as follows:

404 Counsel for the defendant thereupon exhibited to the witness a letter from Henry Kirtland addressed to her, which was heretofore offered in evidence, and the letter was identified by the witness as having been received by her and as being in the handwriting of Henry Kirtland, the witness stating that as soon as she received it she sent it to the office of Mr. Walker, her attorney.

Cross-examination.

By Mr. ALDRICH:

I was born on December 13th, 1837, and married Mr. Alexander on September 23rd, 1857, when I was twenty years old.

Mr. Alexander had been an invalid for two years before his death. He was in New York a little while before Christmas, 1885. I think he left here some time in October and came back before Christmas.

I don't think I had seen Mr. Waldron for three years prior to this illness of Mr. Alexander. I think Mr. Alexander went to the Tolleston farm to meet Mr. Waldron after his return from New York and before he was taken sick. He was an invalid at that time. I had known Mr. Waldron for fourteen years, and he had been at our house frequently during that period with Mr. Alexander. Whenever his business, while he was general manager of the Lake Erie & Western road, would call him to Chicago he always made our house his home; but I had not seen Mr. Waldron for three years before the time he came here during Mr. Alexander's last illness.

Mr. Alexander was able to be dressed and went to the train at the time he went to Louisville, but he was a very sick man.

405 The first time I saw Mr. Waldron after my return from the burial of Mr. Alexander was in Mr. Walker's office. I don't remember the date. He had not moved to Chicago at that time, that I was aware of. I don't remember when I first learned that he had moved to Chicago and don't know where he was stopping at that time. At the time I was taken sick, in July, 1886, I knew he was in business in Chicago, but I didn't know he had removed here. He had never talked with me on the subject of his personal and domestic affairs. I think at the time I was taken sick he was stopping at the Beaurivage, but I don't know where he was stopping before that. I don't know how long he had been there nor how long I had known of his being there.

I had been riding with him four or five times prior to that time. I think I called for him at the Beaurivage with my carriage once and I might have done so twice, and I think I met Mr. Waldron once on Jackson street and took him into the carriage somewhere between Michigan and Wabash avenues, but I don't remember where I saw him after that. I presume he started with me from my house on some occasions, but I don't know how many. I have no recollection on that subject. I was not in the habit of riding with gentlemen particularly. I have ridden with Mr. Walker a great many times, but could not tell how many times, and think I have rather overstated the number of times I rode with Mr. Waldron. It is a matter that I attached no importance to at all. Marius Casperson was my driver at that time.

I went East after my illness in 1886. I was ill about three weeks, and at the time I left for the East I was not well, but was able to travel. I remember the bill I paid Henry Kirkland for his services

in connection with that illness. The first part was for
406 serving meals and the other for nursing at night. He might have called it nursing, but I did not consider him a nurse. I consider that a nurse is a person who sits in a sick-room and takes care of an invalid. I did not dispute his bill and I paid it.

Henry Kirtland brought me the bill on Saturday evening and said he hadn't money enough to keep him over Sunday, and I gave him, I think, twenty dollars, which was all I had in the house, which he credited on the bill over Sunday, and Monday morning he came and I gave him a check for the remainder. I knew where Henry Kirtland lived after we returned from the East, after the funeral, up to the time of my illness, but I did not know in whose service he was all the time. I knew he was in Mr. Waldron's service part of the time; Mr. Waldron told me so. He said Henry came to him and stated he had no employment and asked Mr. Waldron to take him, and Mr. Waldron said he had done so. I do not remember the date, but think it was in June, 1886.

I think we were gone East after my illness about three weeks and then returned to Chicago. Mr. Waldron came with us and we were met at the station by my coachman and carriage. I think Mr. Waldron came up to my house with me and went back to the Pacific hotel. I don't think he returned to the Beaurivage flats; I will not be sure.

I presume I took Mr. Waldron for rides after our return from New York in September, 1886. I did not send my horses out to pasture in the summer of 1886, but did in 1887. If we took any rides together after my return from the East in 1886 they were not so often that I can remember when they did occur, but I presume that I did ride with Mr. Waldron that fall. Marius Casperson was
my driver on any such occasion; I can't remember how
407 many times. There was a great deal of sleighing in the winter of 1886–'7, and I think Mr. Waldron did go out to ride with me once or twice in my sleigh. There was nothing about it to impress my memory, and I don't remember anything about it.

I have always been very much attached to my horses and taking care of my stable. The amount of driving I do depends entirely on my health. Dr. Ware attended me for two winters for my throat and is attending me this same way this winter, but I was not an invalid after my illness in 1886.

I think Mr. Waldron was at the Grand Pacific hotel during the autumn and winter of 1886–'7, but I am not sure. I don't think he went back to the Beaurivage. He used to stay at our house occasionally. I could not tell how often. He did not make it his home or remain there all the time. He never made my house his home.

Marius Casperson never drove me to his office in the morning in my carriage. He might have taken me in the buggy. Whenever Mr. Waldron came to my house and stayed there for a day or two my horses, stable, and coachman were at his service along in the morning to take him to his place of business.

I married Mr. Waldron in October, 1887, and after that, of course, he could go as frequently as he pleased.

I never stopped for Mr. Waldron in the evening. I may have stopped for him in the afternoon at the Adams Express building while his office was there, but never in the evening. I don't think I was ever at the Adams Express building after four o'clock in my life, nor as late as four o'clock. I think Mr. Waldron has gone driving with me from that building while his office was there during the year 1886, but it was so seldom that I do not re-
408 member how many times.

My barn is the second stable from the corner. There is just one house and stable between mine and 21st street. I never gave Mr. Waldron a key to my stable and could not say when he first had that key or when I first discovered it. I think it was in 1886. At that time I had in the barn Marius, the coachman, and a hired man who used to do the cleaning of the steps and scrubbing the walks and cleaning the windows. He was an old man and had no other home and was in the barn nearly all the time. I used to allow him to sleep there. During the day, when Marius was driving, there was no one in the barn, unless it was this old man. I suppose he was there most of the time. After a while I got work for him with different neighbors to assist him, and while out scrubbing their steps he would be away from the barn.

I don't know for what purpose Mr. Waldron had need of a key to the barn. I did not know he was living away from his family. I knew he was here in Chicago, but did not know whether his family were coming here or not. I did not talk with him anything about his family. That subject was never mentioned between us prior to the divorce. Nothing was said on that subject whatever. He never told me he had domestic difficulties. I knew that before. But that subject was never mentioned neither by him nor by me prior to the divorce in 1887.

Prior to his divorce there was no talk at all between Mr. Waldron and I of a marriage engagement, and there was no engagement of marriage between us prior to the divorce. The subject was never referred to. There was never any reference to any attachment between us prior to that time. I did not know that under the laws of Illinois a man could have more than one wife at the same
409 time, and that subject was never mentioned between us, not even after Mrs. Waldron called on me in May and alluded to her troubles with Mr. Waldron.

I told Mr. Waldron his wife had called on me, but did not tell him what she said nor the circumstances nor anything about it. I don't think he made any reply whatever when I told him she had called.

After the divorce was granted I think Mr. Waldron asked me if I would be his wife some time between the 20th and 27th of August, 1887, and I told him I would. Prior to that time nothing of the kind had ever occurred between us, and there had been nothing said or done to indicate that there was any affection or feeling of regard between us. It came as a sudden thing to me and was

not expected. The proposal was quite sudden and was as suddenly accepted.

Henry Kirtland worked for us the first time about two years. I do not remember the date when he left. He came back again about the first of December, about the time when Mr. Alexander came home. He was out of employment. I considered Henry as good a man as I could have for the position I wished him to occupy. He always served Mr. Alexander well.

I think Marius Casperson was with Mr. Alexander at one time for nine months as a special driver, and he left and came back to me the August before Mr. Alexander's death and was with me until August, 1887. I think he was married before he brought his wife to my house. I don't remember when he brought here there, but I know their child was born about Christmas of 1886, and his wife had been in my stable several months before that. I think the first name of Marius Casperson's wife was Hannah, and she lived
410 in my barn until the time that I discharged Marius. I never in Hannah's presence made any expression of regard or endearment to Mr. Waldron and I never drove in on the barn floor with Mr. Waldron and got out and put my arms around his neck and kissed him; such a thing never happened in the presence of Hannah or any one else. I never told Hannah that I had great love or regard for Mr. Waldron. I never had a confidential servant or a conversation with my coachman's wife in my life. She had nothing to do in my house. She lived in my stable and was not a servant in my house. I utterly deny ever having such a conversation, and never spoke to Hannah since she left my house until about four weeks ago, when she came to my house to see me and I refused to see her. I discharged her husband, and if she took exceptions to that you might call it parting with her in anger. I had no quarrel with her. I had nothing to do with her.

Before her baby came—about Christmas of 1886—I remember making her some pretty wardrobe for their baby; that is all I did for Marius' wife. The furniture that was sent into the room upstairs in my stable belonged to the stable; it was a part of my stable. I didn't know that they had any furniture in there home belonging to me, except one or two chairs. I don't know where they live now.

I do not remember the date when Mr. O'Neil ceased to have care of the electric bells in my house, but I remember the last interview I had with Mr. O'Neil in regard to the bill for his work; it was in 1887, and I think, perhaps, about the last of the year. I dismissed Mr. O'Neil because he was such a poor electrician. He would
411 come one day and fix the bells and when he went away at night there would not a bell in the house ring, and he would come back the next day and undo what he had done the day before, and I told him I could not afford to pay his bills and dismissed him. I paid him for whatever he did with the bells, I suppose you would call it, by the job or piece. He would send in his bills to me and I would pay them.

At that time I had a brougham; Marius never drove me and Mr.

Waldron in it for a pleasure drive. I brought Mr. Waldron from the Adams Express building in the brougham, I think, but I did not consider that a pleasure drive; my pleasure drives were always taken in the victoria. I used my brougham every day when I came down town, but I didn't drive Mr. Waldron every day, and could not tell you how often I drove in it with him.

In the interview with the plaintiff I told her, if she desired, I would never allow Mr. Waldron to cross my threshold again, and she replied, "Not at all;" her visit to me that night was a very friendly visit; there was not an unkind or harsh word said in any way; there were no charges made against me in that interview; she did not speak about Mr. Waldron being there at my house; she simply said she had heard I had been driving with her husband. I did not consider that a charge in any way. She said nothing about his being at the house, but she said she had heard I had been driving with him, and I suppose she must have thought Mr. Waldron came to my house, but that was merely my inference; she did not request me to cease driving with him and allowing him to come to my house, and when I offered to forbid him the house she said, "Not at all." I did not understand that was objecting to it; in the first place, the burden of her song was Mrs. Emory Waldron; when she came to the house she told me that she
412 thought the less I saw of Mrs. Emory Waldron the better; she tho't Mrs. Emory Waldron was the cause of all her domestic trouble between Mr. Waldron and herself, and the object of her visit was principally to see me about Mrs. Emory Waldron, and she spoke about her husband in that connection, and I said, "Mrs. Waldron, does it make you unhappy because you have heard I have been driving with your husband?" and she said, "Not at all;" and I said, "Because if it does he shall never cross the threshold of my door again;" she didn't request me to stop him; she said nothing about that at all.

Redirect examination.

By Mr. WALKER:

Mr. Alexander's favorite chair that I had given him on his birthday is in my house, in my back parlor, at the present time, and I never gave it to Marius Casperson. He asked me at one time if I had an easy chair to put in his room. I gave him a chair and it was understood at the time that it was for the stable and not for his individual use, but when he went away he took it.

I did not furnish Mr. Waldron's office for him. I gave Mr. Waldron a desk that was in our house and which I had not the slightest use for, and that is all the furniture I ever sent to his office. The hall-tree which Marius Casperson called a dumb-waiter is still in my house in my basement hall, and stood in my old house for sixteen years and has been in my present house for ten years.

At the interview I had with the plaintiff there was no excitement and nothing unkind was said. It was very quiet and peaceable.

413 Here counsel for the defendant rested their case.

Rebuttal.

And thereupon the plaintiff, further to maintain the issues upon her part, introduced the following evidence in rebuttal, to wit:

Mr. Aldrich, for the plaintiff, offered in evidence the deposition of Joseph Hedges for the purpose of showing the domestic relations between the plaintiff and her husband.

To which counsel for the defendant objected on the ground that it was incompetent, irrelevant, and immaterial, and if competent in any event was a part of the plaintiff's original case and was not proper to be introduced in evidence by way of rebuttal; which objection was overruled by the court; to which ruling of the court counsel for the defendant then and there duly excepted.

The portions of said deposition read to the jury were as follows:

414 *Deposition of Joseph Hedges, a Witness for Plaintiff.*

Examined by Mr. KUMLER:

My name is Joseph Hedges. I am 43 years of age and am a hostler and have been engaged in that business 20 or 25 years. I have lived in La Fayette, Indiana, for the past nine years. I know the plaintiff, Mary Waldron, and I know Edward H. Waldron. I went to work for him in 1881 and worked for him about six years, at the house and stock barn most of the time. The latter part of the time I was at the house, looking after the horses there and acting as coachman. Sometimes I was out with the horses at the fairs and things of that kind.

In the spring of 1883 or 1884 I was away from him for three or four months, and then came back and remained until after he went to Chicago, along the latter part of May or first part of June, 1886. I was general coachman and did the driving.

During this time Mr. and Mrs. Waldron got along very nicely. I never saw her oppose him in any shape or form. I never saw any quarreling and never heard her use any violent language towards him nor from him to her. I always thought they lived together very happily, and I think it was just about as happy up to the time he went away as they were before. He didn't put on quite so much airs and wasn't so pleasant himself as when I first went there. He didn't have so much money.

Q. "I will ask you if you ever saw a despatch of Josephine P. Alexander addressed to E. H. Waldron, La Fayette, Indiana."

Objected to by counsel for defendant as incompetent, immaterial, and irrelevant and calling for secondary evidence without laying a proper foundation therefor; which objection was taken under advisement by the court, and the witness answered:

415 I saw one despatch at the time Alexander was going to Louisville, in substance: "Alexander is going to Louisville to be operated upon, and come up and spend Sunday." This was on Saturday, and I took Mr. Waldron to the train that night. Whether Alexander went to Louisville or not I don't know. The

date of this despatch was somewhere along between the first of January and February, 1885.

I don't know where Mr. Waldron went. I took him to the midnight train on the Monon road, at the Lahr house, and he went north. He did not tell me where he had been after he returned home.

Cross-examination by Mr. McCoy, for defendant:

I commenced to work for Mr. Waldron in 1881. I did not know the plaintiff before that time. When I first went there I worked at the stock barn, about a quarter of a mile from Mr. Waldron's house, and boarded with James Lee, Mr. Waldron's foreman at the stock barn, for about fifteen months; then I came down to Waldron's house, and he made me foreman at the stock barn, and then I went backwards and forwards and made the house my home and boarded there.

I was not a married man. I slept at the barn and took my meals at the house with the hired girl, not with the family. I stayed there altogether and sold stock and was always around there.

I did not see very much of Mr. and Mrs. Waldron when they were together. I was not around the part of the house where they were. I would see them casually as they came into the part of the house where I was, and did not see them together very often. She was often at the door when I would take him down town, but more often she would be sitting in the library.

Mr. Waldron was away from home a good deal, his railroad business taking him away two or three days and then back
416 home when I first went there, and shortly afterwards he resigned from the railroad, and after that was away very often. He would go to Cleveland and New York a great deal.

I was not working there at the time his leg was broken. I had quit, I should judge, about two or three months before that time and I went back again about Christmas, 1884.

After I went back there Mr. Waldron left the house and boarded down at the St. Nicholas hotel awhile. I don't know how long. I think it was about a month after I went back there that he went to the hotel. I can't say why he left. He was always treated well enough. I couldn't say why he left.

I never heard any differences between them or any arguments or anything and never saw either of them get out of humor.

Annie Horan was the servant-maid there at that time and had a better chance to know how they lived. She was in the house more.

While Mr. Waldron was at the hotel I used to go to see him every day. He came right back to the house after he quit the hotel—about the 9th of September—and stayed there until the next June. He was away only to go, as he claimed, to Chicago looking for a position on the railroad. After his leg was broken I do not recollect him saying that he was going to New York.

I don't know whether the telegram that I saw was from Mr. or

Mrs. Alexander. It was in the phaeton when I went home and I threw it down. Mrs. Waldron came down and saw it and got it. I have never seen it since.

At the present time I am working for Mr. Gregory at the Fair grounds. Mrs. Waldron came out at the Fair grounds to-day to get me. I have not talked this matter over with her to amount to anything.

417 I knew Mrs. Waldron's eldest son, Ed. Beauchamp. He came there once in a while. I never saw the sign of a quarrel between Mr. and Mrs. Waldron in my life, and never heard either of them use any harsh language toward the other. It surprised me like everything when he quit his home and went to the hotel. He never told me that he had any trouble. He was not much of a man to talk about his private matters. You wouldn't know anything from him. He wouldn't quarrel with anybody, and if one wanted to fuss they would have to do it themselves.

Along in the summer of 1884, before he got his leg broken, he was away from home a good deal in the hay-cutting business, and was only home occasionally. I guess he tried to be home every week over Sunday.

I knew Mr. Alexander. He used to be down at Mr. Waldron's house frequently, and Mr. Waldron used to go to Chicago to Mr. Alexander's, when Mr. Alexander was alive. He and Mr. Alexander were close friends—the finest in the world. Mr. Alexander thought more of him than of a brother. He must have, the way he treated him.

At the time of this telegram I speak of Mr. Alexander was pretty near his death. He did die shortly afterwards and was just about gone. I think the telegram was from Mrs. Alexander. I believe I recollect of Mr. Alexander being at the house there when Mr. Waldron was away hay-cutting.

After Mr. Waldron went to Chicago I stayed there—at Mrs. Waldron's—until the 9th of March, 1887. Mr. Waldron didn't want Ed. Beauchamp around the house the last few years. He got to be very bad. Waldron had done a great deal for him, and he wouldn't do anything for himself, and Waldron didn't propose to keep him there. I think there was some feeling. Waldron wouldn't say anything if he stayed there for a year.

418 I saw a great many telegrams from Mr. Alexander to Mr. Waldron. He received a great many telegrams, and he would often read his mail and throw it down in the buggy, and I had to carry it in the house always. He used to have telegrams from Mr. Alexander often, from all over the country. They were close personal friends and thought a great deal of one another. I think I saw Mrs. Alexander here once, at Mrs. Waldron's house, with another lady.

419 Thereupon counsel for the plaintiff offered in evidence the deposition of—

William C. Wilson.

To which counsel for the defendant objected on the ground that the evidence was incompetent, irrelevant, and immaterial, and that if the evidence was competent in any event that it was a part of the plaintiff's original case and was not competent by way of rebuttal, and for the further reason that the deposition had already been suppressed by the court on the motion of the defendant.

Which objection was overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

The portions of said deposition so read in evidence by counsel for the plaintiff were as follows:

My name is William C. Wilson. I am sixty-one years of age, and reside in La Fayette, Indiana. I was the attorney for the complainant in the divorce proceeding in the superior court of Tippecanoe county, Indiana, at the May term, 1887, in which Mary A. Waldron was the complainant and Edward H. Waldron was the defendant, being a proceeding for a divorce. I filed the complaint before Judge Larue in the superior court of Tippecanoe county.

"I paid little attention to the testimony given on the trial other than to see that it was sufficient to grant a decree, for the reason that the divorce was being granted more at the instance of the defendant than of the plaintiff, and his counsel had been told by me that they would have to produce the evidence to make out the case. I might go on to explain further. After the evidence
420 was in the court indicated what would perhaps be the decree; it was not yet granted, but he indicated what it would be probably. Mrs. Waldron was at my office and I knew, or at least thought I knew, the condition of her mind, and I asked Judge Larue to go and see her and talk with her, and he did, and did so in the presence of the attorney on the other side. I don't suppose it would be proper to say what was stated there, but I might do it because it was in the presence of both attorneys."

Counsel for the defendant moved the court to strike out the last part of the statement of the witness (enclosed in quotation marks) on the ground that it was incompetent, irrelevant, and immaterial.

The motion was overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

By Mr. ALDRICH:

9 Q. You may do so.

To which question counsel for the defendant objected on the ground that the evidence was incompetent, irrelevant, and immaterial.

Which objection was overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

A. Well, Judge Larue told Mrs. Waldron that sufficient cause had been made to grant a divorce, but she seemed to be reluctant to have it. There seemed to be a hesitation, which she spoke of, in her own mind as to whether she could give up that womanly affection which she had for her husband or give up the property for her support. These two causes were before her mind. Quite a little chat was had there, and at first she declined entirely to
421 have anything more to do with it. Judge Larue told her she might dismiss her case or have the decree; that he would not pass upon it that evening, and he told her to go home and think of it and come back and let him know the next morning, which she did.

Counsel for the defendant thereupon moved to strike out the answer of the witness as entirely improper, irrelevant, incompetent, and impertinent; which motion was overruled by the court; to which ruling of the court counsel for the defendant then and there duly excepted.

Cross-examination by Mr. McCoy:

Counsel for plaintiff also read in evidence the following questions and answers from the cross-examination and redirect examination of the witnesses; to the reading of each of which questions and answers counsel for defendant objected on the ground that the evidence was incompetent, irrelevant, immaterial, and not proper rebuttal; each of which objections was overruled by the court; to each of which rulings of the court counsel for defendant then and there duly excepted.

The said questions and answers so read were as follows:

17 X Q. In connection with the adjustment of the property matters at the time of the divorce, you examined the deeds that were made to Mrs. Waldron, did you not?

A. Yes, sir; I believe I did. They were handed over after the decree was entered, and perhaps I looked at them before. They were drawn up by Mr. Behm, and he was a reputable attorney and understood what was to be done.

20 X Q. Look at this paper endorsed by the notary as having been produced before him by Robert Davie, a witness, and
422 examine the endorsement on the paper which reads as follows: "Mrs. Waldron, if you approve this I can say it is legally right. W. C. Wilson," and state whether or not that is the paper you referred to, and whether or not that is your signature on the endorsement (handing the witness said paper).

A. That is my signature. Whether the body of the paper is the same as when I endorsed it or not I am not able to say. There is an erasure upon it, and I don't know what that is or who made it or why it was made. I don't know anything about that.

21 X Q. You have been the solicitor of Mrs. Waldron since she

procured her divorce. You have been her counsel for various matters, have you not?

A. I don't think I have done any business for Mrs. Waldron since. I don't recollect it unless it was some little matter about buying her land or drawing a deed. I don't recall anything.

22 X Q. Were you ever her attorney in any other matters prior to the time she procured this divorce?

A. I don't know but what I appeared in some little case a short time before this matter came up involving questions about some lands and some matters about the sale of a town lot about which she consulted me, but I don't remember what she said.

23 X Q. You filed that bill for a divorce as her attorney, did you not?

A. In one sense I did, and in one sense I did not.

24 X Q. You signed it?

A. Of course, as attorney, as the record will show. I appeared as her attorney, but in point of fact (I want you to understand that) Mr. Behm first drew the complaint and sent it to me, and it was not satisfactory.

25 X Q. I want you to answer the question. I asked you
423 to state the fact whether or not you were her solicitor in that case. Now, I want to ask you further: Do I understand you to say that you got up a collusive case there and imposed upon the court to get a fraudulent divorce?

A. No, sir.

26 X Q. Do I understand you to say that you were acting as the attorney of Mr. Waldron in that matter?

A. You must be very stupid to think so.

27 X Q. Do I understand you to say that that bill was filed at the instigation of Mr. Waldron?

A. I can't say what you understand.

28 X Q. Do you mean to be so understood in your testimony?

A. If you will allow me to explain I will tell you.

29 X Q. I want an answer to that question.

A. I cannot answer without giving an explanation because there isn't anything but an explanation. *I* record shows I filed the bill for her as her solicitor, of course, and to that extent it is true, and it was filed, as far as I was concerned, in perfect good faith, but the whole scheme was brought about by the desire of Mr. Waldron to compel Mrs. Waldron to get a divorce when she didn't want it.

30 X Q. How do you know that?

A. From the action of the parties and their conduct, and from statements made to me.

31 X Q. Do you mean to say that Mrs. Waldron was under compulsion to get that divorce?

A. She stated to the court before it was granted, in my office, that it would break her heart to get that divorce, and the question came up whether she would get it or lose all the property which she should have to live upon. That was stated to the court.

41 X Q. What do you mean when you say that he (Mr.
424 Waldron) was to furnish the evidence for her to get the divorce?

A. Now, I will tell you. The first I heard of the granting of this divorce or the first I knew it had been brought to a conclusion was the presentation of that paper to me and an interview I had with Mrs. Waldron. I advised with her then in regard to the matter. I don't suppose it would be proper for me to state what was said.

42 X Q. I object to your doing anything but answer my questions.

A. Well, some time after I was called upon by Mr. Behm in regard to the matter and in reference to an agreement having been made between parties I had been told——

43 X Q. I object to your stating w hat you had been told.

Mr. ALDRICH (for defendant): Understand that as representing Mrs. Waldron she waives all questions of privilege.

A. Mrs. Waldron called on me to confer with me. She said to me that Mr. Davie, as the agent of Mr. Waldron, had been oppressing her dreadfully; that they had cut off her means for support; that they had taken all the proceeds of the income of the property; had gone even to the grocery stores of the town and had forbade her the privilege of buying enough to make her living, and were suffering the property that was then liable to execution to be sold and swept away and deprive her entirely of a living unless she would file her application and get a divorce; that then they would pay all the liabilities upon the property of every kind and give it to her. Of course, I advised her that it was best to take the divorce, because I had no anticipation that she could ever restore Mr. Waldron to her again as a husband; that was my view of it. She went home, and the next thing brought me was this paper, which I signed, and which she said she had reluctantly consented to. After that Mr. Behm prepared a bill for the divorce. It was not
425 satisfactory to me, and I prepared one myself that was filed, notifying him about the same period of time that they would have to furnish the proof in the case, and they did so, as far as I know anything about it.

46 X Q. Who paid your fees in the case?

A. Mr. Adam O. Behm paid me $100.00; that was part of the arrangements for closing up the concern. I suppose it came from Mr. Waldron.

Mr. ALDRICH: I wish to state that that was done with the full knowledge and consent and approval of Mrs. Waldron.

108 X Q. Was it contrary to her wishes that you secured the divorce?

A. No, sir. I mean to say about that only that I was led from Mrs. Waldron's conversations in regard to the matter to believe that she felt that she was under restraint, that she was doing something she didn't want to do, and I had Judge Larue to have a talk with her for the purpose of satisfying him, and he said to her, "Mrs. Waldron, I can grant you this divorce if you say so, on the testimony, and, if you do say so, there is no evidence here to grant Mr.

Waldron the divorce and he can't get one from you and I will dismiss this bill." What I mean to convey is that she was laboring under the impression that it was a question of the loss of the affection of a gentleman she loved, on one side, and the loss of the entire property, on the other, and she was trying to balance her mind on these two things; that is the reason my client had to consent to the divorce in the presence of the court.

116 X Q. State the number of years you boarded at the Lahr house while Mr. Waldron boarded there.

A. I was there altogether about seven years at that time and I have been boarding there now for the last three or four years.

426 Mr. Waldron came from St. Louis or from the Ohio & Mississippi road and he boarded at the same table for a good while; they lived there on Sixth street, a short distance away; they occupied one of the Wallace's houses, and I want to add that I thought they were a very happy couple at the time.

Redirect examination:

1 Q. Col., so far as you have ever heard, Mrs. Waldron has been known in this community as a devoted wife, has she not?

A. I never heard it questioned.

2 Q. She has always borne a reputation among the best people of La Fayette as a worthy woman and a good wife and mother, has she not?

A. I think so, as far as I know.

3 Q. You have stated that it was understood between Mr. Behm and yourself and by the parties that she was acting in some respects under compulsion, you mean, do you not; that she was fearful that her property would be taken away from her and that she would be left penniless and with an aged mother to support?

A. I have tried to express that the woman's mind was hesitating between the love she had for Mr. Waldron and the hope that she could again restore him to his family and the fear that failing in that the property would all be destroyed and utter destruction come to her financially. I think those two elements were operating in her mind.

7 Q. When you speak of them you refer to Adam O. Behm and Edward H. Waldron?

A. I never had an interview with Mr. Waldron about this matter in any shape or form.

8 Q. But with Mr. Behm as his representative?

A. I never had an interview with Mr. Behm except with reference to preparing the papers for this case and the trial of

427 it. This was about all the conversation with Mr. Behm. The balance of the conversation was held in the presence of the court.

9 Q. State whether or not the proposition to procure the divorce and bring about the legal separation originated with Mrs. Waldron or the defendant, Edward H. Waldron.

A. The first, as attorney or in any other way, I had to do with it

was back in 1885. She came to my house and said she anticipated something of the kind on his part. She came to my house and told me she was going to surprise me with what she was going to say, and said she was anticipating trouble on the part of Mr. Waldron, thinking he wanted to get a divorce from her, and she said, "I will tell you the particulars some other time if anything comes from it," and in 1886 was the next that I heard of it, and then Mrs. Waldron came to me saying that Messrs. Coffroth & Stuart had received orders from Mr. Waldron to commence proceedings against he- for a divorce, and that Mr. Coffroth either had been or would be out to see her and she wanted to know what to do, and I told her Mr. Coffroth was an honorable gentleman and to tell him exactly the whole condition of things without any concealment or evasions, and afterwards she said she had a very pleasant interview with Mr. Coffroth and had told him all about the matter.

10 Q. And no proceedings were brought?

A. Not then; nothing was ever brought. I didn't hear much about the divorce then except that I was occasionally talked to about the matter and how things were going on.

428 *Testimony of Annie Casperson.*

Called on behalf of the plaintiff and examined by Mr. ALDRICH:

My name is Annie Casperson. I am the wife of Marius Casperson. I lived in the barn in the rear of the premises occupied by Mrs. Alexander. I moved there the last of May, 1886, and lived there until the last of August, 1887. I once saw Mr. Waldron kiss Mrs. Alexander. He kissed her in the barn and went out. That was in the fall of 1886.

Every time Mrs. Alexander was in the barn that whole summer I talked with her about Mr. Waldron. She didn't use to come in the barn so much until after she came back from New York—after she had been sick. One morning she told me she loved him; he was a very nice man. She always spoke about Mr. Waldron, but she didn't say that more than once. He was there every day. He went out at morning and came back at night. I let him in the barn every day to the last fall, when he got a key to the latch to come in the barn door.

I went to Sweden with my husband about the 9th of September, 1887, and we returned the 7th of November, 1887. He worked for the money to go and I saved it. He did not make any money in any other way. He lived on State street about 18th street at that time and bought a scavenger wagon a few days before he left Mrs. Alexander's. He had that about a month and sold it again, and I don't know how much he made on it—$290 or something like that.

He gave me the money and also his earnings every month he got his pay. He gave me every cent, and sometimes he didn't get paid before two months, and then he got all he earned.

429 Cross-examination.

By Mr. McCoy, for the defendant:

I live at 2927 La Salle street. I have lived there only a week. Before that I lived at 3711 State street. I lived there since July of last summer. Before that I lived at number 2840 Wentworth avenue, at the corner of 29th street. I lived there a year and about a month or so. Before that I lived on Hanover St. I can't exactly tell the number, but it is the house that is across from the German church near 26th street. I lived on Hanover St. about three months.

Before that I lived up on 26th street. I can't tell you the number, but it is not very far from Halstead street; I guess it is number 499. I lived there about four months. Before that I lived on Huron street, on the west side, the whole winter. Before living there I came from the old country. I went there when I first came from the old country. Before we went to the old country I lived on 18th and State streets about a month and two weeks, and before that I lived at Mrs. Alexander's from May, 1886, to the last of August, 1887, when I left Mrs. Alexander's and went to 18th and State streets.

My husband left the employment of Mrs. Alexander the first of July, 1887. I did not live in the barn after John Wilson came there to work. It was only a few days after my husband quit working as coachman for Mrs. Alexander before she got another coachman, because I was down there for a pitcher at night and he came in thro' the kitchen out in the barn to watch the barn, because there was lots of painters there.

430 Before I went to live at Mrs. Alexander's barn I had been married to my husband from March to the last of May. Before I went to live in that barn I lived on the west side on Milwaukee avenue. I was married in the old country to my first husband and went to Michigan and stayed there about five years, and then I went back to Sweden and took my children back there and left them with my mother there, and stayed at home six weeks only and then came back here and married Marius Casperson in March.

My child was born on the 30th of December, at the time I lived in Mrs. Alexander's barn. My husband went across the water with me after leaving Mrs. Alexander's employ. We started on the 9th day of September, 1887, and got back the 7th of November, 1887, the same year he quit working for Mrs. Alexander.

I never worked for Mrs. Alexander. I lived in the barn. My husband went to Norway with me, not Sweden. On our road home we came by way of Liverpool. After my husband came back he was working two weeks down on Wabash avenue. Then he didn't have anything more to do for about a month or so, and then he went to work for Mrs. Byram on the 2nd of April, 1888. From November, 1887, until 1888 he didn't have any work only for a few weeks.

After he quit working for Mrs. Alexander he went into the scav-

enger business, hauling ashes out of the alleys with a wagon. He stayed in that business about a month and sold it out again. I can't exactly tell you how much money he made on it, but I know he made a good deal on the wagon because the same fellow that had the wagon bought it back again. I had about five hundred dollars besides that. It was my husband's money. He gave me his money every month when he got paid, and he does now. I spent about five hundred dollars on our trip across the ocean. I had $175 left when I came back. My husband had no money aside from what I gave him.

431 My husband got sixty dollars a month when he lived at Mrs. Alexander's, and he got his rent free. We were well treated there.

When we lived on 26th street it was in a two-story frame house, and I lived on the first floor and a Swede family upstairs. My husband was frequently away from home over night at that time; when he was out driving late at night he would stay over at Mr. Byram's where he was working. There were two Swede men and two Norwegian men boarding with me at that time.

I knew a Mr. Johnson who boarded with an Irish lady in the house next to mine. I remember his looking over my photograph album and seeing a photograph of Mrs. Alexander.

I have seen Mr. Thompson twice and Mr. Boyden twice—men who are in Mr. Aldrich's office—and I saw Mr. Aldrich to-day. Those are the only lawyers I have talked to about this case. None of the lawyers of Mrs. Alexander have talked to me, and Mrs. Alexander has never talked to me about it. I have never told the lawyers anything about what I have testified to until to-day. I never mentioned it before to anybody. I never told my husband what I saw in the barn there until I heard yesterday that some lies had been told about him, and then I told him I wanted to go down and testify. My husband was not in the barn when they were doing this kissing.

(The witness identifies the Mr. Johnson before spoken of as being present in the court-room.) I never told Mr. Johnson that my husband expected to get five hundred dollars in a short time for acting as a witness in the suit brought against Mrs. Alexander, the lady whose coachman he formerly was; that the lady was implicated in a divorce scandal, and the lawyers on the other side had offered Casperson that amount if he would testify against her.

I have always said that Mrs. Alexander was a nice lady, and she was very good to me; and I say to-day she was good, and I

432 never had anything to complain of her. I never saw Mrs. Waldron from La Fayette in my life.

Redirect examination:

Neither myself nor my husband, to my knowledge, have ever been promised any reward for testifying in this case, and he has never been paid anything for testifying.

Testimony of C. R. Cummings.

A witness called on behalf of the plaintiff, sworn and examined:

My name is C. R. Cummings. I have been at different times president of several railroads, among others the Lake Erie & Western. Mr. Waldron was manager of the road at that time, and I think for three or four years thereafter, perhaps longer, until some time in 1882 or 1883.

Q. I will ask you whether or not he quit that road because of any complaints made to you by his wife, the plaintiff in this case, Mrs. Mary A. Waldron.

Mr. WALKER, for the defendant: That is objected to. It is fully proven what Mrs. Waldron said, and we have not attempted to show what she said to Mr. Cummings, except on cross-examination, and on that cross-examination she said she didn't talk to him at all about it.

Which objection the court overruled.

To which ruling of the court counsel for the defendant then and there duly excepted.

A. No, sir; she never did. I do not recollect that she came
433 to me after he had left the road for the purpose of getting him reinstated. She wrote to me a long letter, soon after he left the company's employ, on the subject of getting him reinstated.

Q. I wish you would state whether or not in the year 1883 or at any subsequent time you in a conversation with Thomas L. Brannan said that you had discharged Mr. Waldron owing to complaints made to you by his wife about Mr. Waldron running over the country with women of impure character in his private car, or anything to that effect.

Objected to by counsel for the defendant on the ground that the question should be put in the language used by the witness Brannan; which objection was overruled by the court; to which ruling of the court counsel for the defendant then and there duly excepted.

A. No, sir; I never had any such conversation with Mr. Brannan or any other living being. Mrs. Waldron never spoke to me of her husband excepting kindly.

Cross-examination.

By Mr. WALKER:

She has spoken to me about her husband and I have been at their house repeatedly, but she never spoke to me about him in Chicago until last evening. I do not remember ever meeting her in Chicago before last evening. I have been told she called at my residence in my absence.

I think Mr. Waldron was asked to resign his position as manager of the Lake Erie & Western railroad in 1883, and he did so. His resignation was involuntary. I have no recollection of ever hearing any charges of his using the private car for improper purposes before the present time. I have heard about the car being
434 run over the road with rather hilarious company, but do not remember whether that influenced my action when I requested his resignation or not. The operation of the road was unsatisfactory, and there were other reasons for his resignation.

I have never had any business transactions with Mr. Brannan, to my recollection. I have understood he did business over that road, but I never met him more than once or twice, and I never knew him. I don't remember whether I ever met him in my office or not. I think I have seen him somewhere in Chicago, either in the hotel or in my office, but I would not have known him as I saw him here in the court-room. I think I met him at La Fayette with Mr. Waldron, and I think he came to my office in Chicago later about some rebates that Mr. Waldron was uncertain about the propriety of making, and probably that conversation occurred in my office.

Mr. Waldron came to my office a number of years ago and asked me if I had not made some such statements to Mr. Brannan as he has testified about here, and I told Mr. Waldron I never did, and that his wife never spoke of him to me except in kindness, the greatest kindness. My mind was impressed with this conversation with Mr. Waldron, and I am certain I never had any such conversation with Mr. Brannan; and I do not remember ever talking with my wife on that subject. I am very positive I never did.

435 *Deposition of John M. Larue.*

Thereupon counsel for the plaintiff read in evidence questions 1 to 9, inclusive, of the direct examination and question and answer 5 of the redirect examination of the testimony of John M. Larue; to the reading of which parts of said deposition counsel for the defendant objected on the ground that it was incompetent, irrelevant, and immateral, and that the deposition had been suppressed by the order of the court.

Mr. ALDRICH: I want to show who was the witness in the divorce proceedings. It was no part of our original examination to show the divorce. Your honor let them cross-examine her on that subject because you said it showed the separation and family quarrels and dissensions and went to the mitigation of damages. It was no part of our original case.

The COURT: I thought you claimed in your opening to the jury that the divorce was gotten by the connivance of the defendant in the case. I thought your testimony was directed to show that the defendant got the divorce instead of the plaintiff.

Mr. ALDRICH: Not on our direct. You let them go into that on the cross-examination to show mitigation of damages.

Mr. WALKER: You offered in evidence a certified copy of the record, and over our objection it went in.

The COURT: All that is material in that testimony at all is the name of the witness. You may introduce that.

To which ruling of the court counsel for the defendant then and there duly excepted.

The portion of said deposition so read in evidence was as follows:

436 My name is John M. Larue; my residence, La Fayette, Indiana; I am 62 years old, and was judge of the superior court of Tippecanoe county, Indiana, in the summer of 1887. As such judge I presided in a case brought by Mary A. Waldron against Edward H. Waldron for a divorce, which case was heard and determined in that court.

Besides the witnesses as to residence whom I do not now remember, Mr. Davy was the principal for the complainant in that case, I think. That is my recollection. I am not able to state Mr. Davie's first name. Probably if I heard it I might remember it. It might have been Robert. I met him on the stairs just now as he was coming up to this office, and he is the same man who is now present in the room (identifying the witness, Robert Davie, whose deposition has been read in the case).

Deposition of A. Orth Behm.

Taken on behalf of the plaintiff.

Thereupon counsel for the plaintiff offered in evidence parts of the deposition of A. Orth Behm.

Counsel for the defendant objected to said testimony for the reason that the deposition had been suppressed by the order of the court, and for the further reason that the evidence was irrelevant and not proper rebuttal to any evidence bro't out by the defendant.

Which objection was overruled by the court.

To which ruling of the court counsel for the defendant then and there duly excepted.

437 The part of said deposition so read in evidence was as follows:

My name is Adam O. Behm; my residence, La Fayette, Indiana. I am 49 years of age, and by occupation I am an attorney-at-law. I think I became acquainted with the plaintiff, Mary A. Waldron, the night I was married—that is, to have a speaking acquaintance—and that was on the 26th day of December, 1867. I knew her by sight before that time, but I had no speaking acquaintance with her. She and her husband were at my wedding. I have known her intimately, you might say, from that time to the present, and have also known Edward H. Waldron the same length of time. I knew him by sight before.

In the proceeding for divorce in the superior court of Tippecanoe county, Indiana, at the May term, 1887, brought by Mary A. Waldron against Edward H. Waldron I appeared for the defendant,

Edward H. Waldron. I was first employed in that connection four or five weeks before the divorce was granted. I did not go to Chicago on that occasion. My communications on that subject were through Mr. Robert Davie. I did not meet Mr. Waldron at any time after my employment and prior to the granting of the divorce and never had any consultation with him at all. I had consultations with the plaintiff, Mrs. Mary A. Waldron.

It is pretty hard for me at this date to state what representations were made to her as coming from Mr. Waldron. The representations were pretty nearly all made by Mr. Davie, because he was familiar with the matters and I was not. The matter as finally agreed upon was put into writing. I think Mr. Davie has a copy of it. It was submitted to Mr. Wilson, her attorney, and he endorsed on it that it was all right, and that if she was satisfied with it to sign it. I was not Mrs. Waldron's attorney.

438 The writing I refer to was in my handwriting, but in the shape of a proposition coming from Mrs. Waldron to the other side.

(Witness identifies the paper which has been offered in evidence, marked Plaintiff's Exhibit No. 1 in the deposition of the witness Robert Davie, as the paper referred to and as being in his handwriting and bearing the endorsement above referred to in the handwriting of Col. Wilson.)

Q. You may state who were the moving parties in those negotiations preceding the filing of the bill for divorce.

Which question was objected to by counsel for the defendant; which objection was overruled by the court; to which ruling of the *d*ourt counsel for the defendant then and there duly excepted.

A. Well, I could only say that Mr. Davie seemed to be the moving party. I consulted with him altogether. I never saw Mr. Waldron and never had a letter from him at all after the divorce was granted and never had a consultation with him. I had conversations with Mrs. Waldron.

Q. State whether she was anxious for a divorce or otherwise.

To which questien counsel for the defendant objected.

The court overruled the objection; to which ruling of the court counsel for the defendant then and there duly excepted.

A. Well, she was not anxious for a divorce at any time.

Q. 20. You may state whether she didn't express herself as hostile to the idea of getting a divorce.

To which question counsel for the defendant objected.

The court overruled the objection; to which ruling of the court counsel for the defendant then and there duly excepted.

439 A. I think she did the first time I was at the house.

Q. 21. And at a number of subsequent interviews, wasn't she?

A. I don't know as I can put it that strong, but she never wanted a divorce, even up to the very last day it was granted.

Counsel for the defendant moved to strike out the last answer of the witness.

Which motion was overruled by the court; to which ruling of the court counsel for the defendant then and there duly excepted.

During the time I have known the plaintiff, Mary A. Waldron, she has borne the reputation of a devoted wife and mother. During the last few years preceding the granting of this divorce the habits of Mr. E. H. Waldron were not correct. He drank too much liquor. I have no knowledge or information concerning his habits with respect to frail women, except rumours. There were rumours that he was in the habit of cohabiting with women of frail virtue. So far as there were any rumours in the community of difficulties between the plaintiff and her husband, Edward H. Waldron, those rumours placed the blame upon Mr. Waldron.

In the procuring of the divorce by the plaintiff from Edward H. Waldron I did not know of her acting under compulsion in any way. As I stated before, I don't think she wanted the divorce, but she felt that Mr. Waldron would not live with her—that he had left—and she told me that he was living with another woman, and she showed me her picture at the house, and I said then, as I say now, if he could not live with her the next best thing was to get a divorce and get all the property she could. I had heard of some trouble in that family before the time of this divorce. It seems to me that it was about a year before that. I understood he had
440 left home and was living at one of the hotels here. I could not remember particularly as to the exact time. It was a matter of public notoriety that they didn't live together. I never saw Mr. Waldron after he left here. I have not seen him from that time to this. I only know that Mr. Waldron's habits of drinking grew on him like they will on any other man that don't take care of himself. He was a drinking man back as far as I knew him, probably back to the time I first knew him; at least for the past fifteen years he has been in the habit of drinking liquor and the habit grew on him.

Q. I have forgotten to ask you about the testimony on the divorce proceeding—by whom it was furnished.

To which question counsel for the defendant objected.

The court overruled the objection; to which ruling of the court counsel for the defendant then and there duly excepted.

A. I think Mr. Davie was the witness as to the material facts. I was one of the witnesses as to the residence, and there was some other person. Our law requires the evidence of two householders and freeholders as to residence, and I was one of those, and I think Mr. Davie was the other witness in the case.

Q. Then, as I understand you, Mr. Davie was the only one that testified to the material facts in the case aside from residence?

A. That is my recollection now.

Q. Don't you know that Col. Wilson told you at the time that if the divorce was granted Mr. Waldron's side would have to furnish the testimony?

To which question counsel for the defendant objected.
The court overruled the objection; to which ruling of the court counsel for the defendant then and there duly excepted.

441 A. Well, I don't remember. He may have done that. I know he did.

Q. You know that Mr. Waldron's side did furnish the testimony?

To which question counsel for the defendant objected.
The court overruled the objection.
To which ruling of the court counsel for the defendant then and there duly excepted.

A. Yes, sir; Mr. Davie was the only witness that I know.

Testimony of Marius Casperson.

Called on behalf of the plaintiff and examined by Mr. ALDRICH:

I have read the testimony of John Wilson, given on this trial. I did not state to him that I had gone to Liverpool or to England with five hundred dollars I had received, nor that I had bought a scavenger wagon, or anything about that to him. I sold the scavenger wagon before I went to Liverpool. I went through Liverpool and on to Norway, and the money I spent on that trip I earned working hard for it. I made $153 out of the scavenger wagon while I had it. I have never had any promises of reward or any reward from anybody connected with this case.

Cross-examination.

By Mr. WALKER:

I don't think I ever talked to John Wilson about the scavenger wagon at all. He was a stranger to me. I drove my wagon through the alley back of Mrs. Alexander's premises. I was
442 hauling manure away from the barns along there, but not from Mrs. Alexander's barn. I never talked with John Wilson at all about my business, and never hauled a load from there. I was there at the barn twice and saw him, the second time about a week after the first time. The first time was immediately after I came back from Europe, about a couple of months after I left Mrs. Alexander's, or a little more than that; probably three months. I went in there to call on the girls—just a social matter—and I wanted to see the stable. They had been repainting it inside, and it is the prettiest stable I know of in this town; and the conversation we had in there was merely about horses.

Testimony of Charles Morton.

Called on behalf of the plaintiff and examined by Mr. ALDRICH:

My name is Charles Morton. I live at 288 Washington boulevard and am cashier of the Grand Pacific hotel. I know Edward H. Waldron well. I have looked over the books of the hotel carefully and find he was not a guest of the Grand Pacific hotel from September, 1886, to May, 1887.

Cross-examination.

By Mr. WALKER:

I examined our room book, which answers to a ledger in any other business and in which we keep all our accounts. I have not brought the books with me. There are about four of them covering that time. I made the examination last evening and it took me about an hour and a half. The books can be brought in
443 here and examined if you wish or you can examine them over there.

Testimony of Williard W. Waldron.

Recalled on behalf of the plaintiff and further examined by Mr. ALDRICH:

I was present at the interview between my mother and Mrs. Emory Waldron on the occasion when my father was at her house. Mrs. Andrews was not present. I heard Mrs. Emory Waldron testify concerning that interview. There was no such scene there as she described, to my recollection.

I first saw my father at the time his leg was broken in a back room of the Lahr House saloon, where the accident occurred. He was lying on a mattress in the center of the room, on the floor. He was so drunk he didn't recognize me. I next saw him about an hour and a half later at the St. Nicholas hotel.

Q. And with whom?

To which question counsel for the defendant objected.

Mr. ALDRICH: I want to show that Emory Waldron's statement of it is not true. I am referring to Emory's statement of what occurred that night and what he said when Mrs. Mary Waldron reached there.

Which objection was overruled by the court; to which ruling of the court counsel for the defendant then and there duly excepted.

A. There were several gentlemen present, the most prominent among whom, I remember, was Col. Godfrey Behm, brother of Adam O. Behm, and my mother was there. She reached there somewhere between four and five o'clock.

444 There was a political procession that night which started shortly after six o'clock, and the persons in the hotel at the time I was there went to the procession afterwards, leaving my father with my mother. He had partially recovered at this time. Emory Waldron was not there. I think he came down with father at the time he was taken to the hotel, and left there about the time the procession started, and remained away until later in the evening, about nine o'clock, I believe. I testified on my direct examination as to my father's request to be taken home.

Q. What arrangements, if any, were made that night about his being taken home?

To which question counsel for the defendant objected on the ground that it has already been gone over before; which objection was overruled by the court; to which ruling of the court counsel for the defendant then and there duly excepted.

A. I came to the hotel between ten and eleven o'clock to take my mother home, and I remember the last thing father said when we left the door was, "Now, Mary, go home and get a good night's rest and have a bed fixed for me in the morning in the library downstairs, and a comfortable room." He said he would be out very early in the morning, about seven o'clock.

I have heard Mr. and Mrs. Emory Waldron's account of the interview in my father's office on the occasion when he returned home, September 9th, 1885. During that interview I was directly opposite the door, standing at the head of the stairs opposite the stairway. I went there with my mother on that occasion and remained there until he came out. There wasn't a policeman in sight there at any time during that interview.

I heard Mr. Brennan's statement in regard to my mother
445 pulling a nubia, or something of that kind, and throwing my father on the floor, after his leg was injured. I was present on that occasion. The only other person I remember being present was the cook of our house. She was in the kitchen. This affair occurred in the kitchen. He had a large, white woolen shawl that he used to tie around his leg when he went out in cold weather to protect it from the cold. It was not a nubia. He went into the kitchen and sat down and handed it to the girl and ordered her to tie it around his leg. The girl came to my mother and asked what she should do, and she took it and commenced to tie it around. He took one end and commenced tying it himself and mother the other. Brannan was sitting outside fully sixty feet from where father was, in the buggy. He was out of the line of vision. The hall was six feet wide and the buggy was standing fully 25 feet from the hall door. I was standing in the doorway and I could only see the wheels of the buggy where Brannan was sitting, so I know he was outside of the line of vision.

When this shawl was wrapped around his leg he gathered up his crutches from the floor and went to use his crutches to help himself, and he attempted to raise, and in doing so lost his balance and fell back into the chair. He did not fall to the floor at all. My

mother did not push him or pull him, and used no violence toward him. She was standing five feet away from him.

In all the time I have lived at home I have never seen any violent conduct on the part of my mother. I have never heard her use violent language to my father. I was in the house a great deal when I lived with my father and mother.

Cross-examination.

By Mr. WALKER:

Part of what Mrs. Emory Waldron testified to occurred,
446 but not all. My recollection of it is materially different from her testimony, and I think I am entirely right and she wrong. I don't think I am liable to be mistaken about it. The fact is clearly impressed in my mind, and Mrs. Emory Waldron's explanation of it the other day is so entirely different from what I know to be true that it was brought to my mind very vividly.

I think I was about 17, or possibly 18, years old. I think it was in 1884 or 1885; possibly later than that. I am past 20 years of age, but am not yet 21 years old. I can't remember dates very well, but facts I remember very clearly. I was born on the 11th of May, 1869.

This occurrence happened in the fall, the latter part of August or first of September, directly after the county fair. I drove my mother to the house at that time and stood out with the horse part of the time. I can't say exactly how long. I think half or three-quarters of an hour after my mother went into the house. I was only a short distance from the door and it was open several inches; part of the time they were standing directly behind it. The house stood back four or five feet from the sidewalk. Mrs. Andrews was not present during that interview, and I understood Mrs. Emory Waldron to say that she was; and I don't think there was so much of a quarrel as Mrs. Emory Waldron led the jury to believe there was. I know what was said when my mother went in there first. My father was lying on the lounge. I saw him lying there when she first went in the door. I led her from the buggy to the door and went up the steps, and then went back to the buggy and watched the horse, and I saw my father while I was at the front door. I saw him when we left.

I was not in the house when she left. I was out on the walk.
447 I did not hitch the horse at all, but was watching him. I think my mother was in the house with my father half or three-quarters of an hour, and she came out and got in the buggy, and I think she rode to Main street with me, and then I got out and she drove home.

After my mother went into the house I didn't hear their conversation for five or ten minutes. Finally they all came to the door. It was a glass door with lace curtains inside, and father was there inside and tried to get out, and the door was open three or four inches and they went back. While they were at the door I heard them talking, but did not hear any such quarrel as they de-

scribed. I think that was before I had followed my father to a house of bad repute.

I never followed him more than once, and that was of my own free will. It was not to see where he was going, but to take him home. I did not take him home, as I could not find him. I did not report all of this to my mother, but such parts as I chose to do.

Emory Waldron is mistaken in his evidence as to the circumstances of my father's injury. He said that my father was not intoxicated or not very much intoxicated at the time. I say that he was so drunk that he did not recognize me when I came into the room. I know he was very drunk from the way he acted. If I recollect right, I helped the doctor wind some bandages around his leg and helped lift him up, and finally, after I had been there fifteen or twenty minutes, he asked what I was doing. He said, "Is that you, Winnie? What are you doing?" He asked the bystanders if that was Winnie, and they said, "Yes." There was quite a crowd there. They were waiting on my father after his leg was broken. I assumed that he was intoxicated because he was in a small back room and not many there, only a few personal friends, and he failed to recognize me and asked if it was his son Winnie.

448 Emory Waldron is mistaken in his statement about the time my mother came to the room at the St. Nicholas hotel. He said mother came down at ten o'clock at night. That is my recollection of it, and I say the hour was between four and half past five in the evening. I can't tell just what hour his leg was broken, as I was not there until fifteen or twenty minutes after the accident. I got there between three and four o'clock in the afternoon, and fix the time by the fact that Blaine arrived there about five o'clock, and I was a member of the drum corp at that time and we were waiting for the arrival of the guests, and we continued to wait until five o'clock.

I understood Emory Waldron to say he remained in the room at the St. Nicholas hotel all the evening of that night. I say he was not there all the evening. I was not there all the evening. I was in four or five times. I think out of the seven hours between four and eleven o'clock that evening I was away from the room two hours or two and a half. Emory Waldron remained there from the time he came, somewhere between four and five o'clock, until about 6.30. Then he and I went out together to the street parade, and I went back in at 7.30 or a quarter to 8 and he was not there, and I went in again at 9 or 9.30 and met him coming up the stairs.

I believe that Emory Waldron testified that my father did not want to go home. I say that he did want to go home. Both my father and my uncle are mistaken in their testimony about that.

The shawl which my father used to wrap up his leg was a knit, white woolen shawl. I know Mr. Brannan was outside of the house on that occasion. That occurred in 1885. I think it was along early in the spring, in the early part of February. After this occurrence my father went out and got in the wagon and drove

down town with Mr, Brannan. I think he came home that
449 night. I am not certain. I don't remember that after that occurrence he went down town to the St. Nicholas hotel and remained there. This may have occurred on the 8th of February, the day that my father left home and went to the St. Nicholas hotel, but I think he returned home that night.

I heard my father's evidence about this occurrence and I think it was substantially the same as Mr. Brannan's. They are both mistaken about the occurrence, and my father and Mrs. Emory Waldron are both mistaken as to the circumstances that occurred at her hous- when I was standing out on the walk watching the horse.

I never have seen any such unpleasant quarrels or scenes between my father and mother as have been testified about here. I deny that they were so bad as the counsel have stated here. I was present at nearly every one that occurred. These witnesses have overdrawn it. I don't remember whether I was present when my mother found the letter in my father's pocket from some woman in La Fayette. I don't think my father read the letter at the table.

I was present at the time my father charged my mother with directing me to follow my father down-town and see where he went. I believe I heard my father accuse her of directing me to follow him. I don't remember what he said nor what she said on the witness stand, but it did occur and I was present. If my mother said it never did occur then she is mistaken. Possibly it might have occurred when she was out of the room. She was out of the room sometimes.

I remember that I was present at the scene between my father and mother in which he charged my mother with putting me as a spy on his tracks to see where he went evenings and see whether they were proper or improper places He made that charge. If my mother stated that such a scene did not occur she is probably mistaken.

450 Redirect examination.

By Mr. ALDRICH:

My mother never directed or requested me to follow my father. That came about in this way: It was during the winter and it was very good sleighing. I drove my father down-town after supper with the sleigh and, if I remember right, he was still walking on crutches. It was during the early part of 1885 and he asked me to meet him at the Larh house at 10.30 or 11 o'clock and drive him home that night. I was out with a sleighing party and was waiting to drive him home and returned to the Larh house and waited an hour or an hour and a half and got very cold and went to inquire if he had been there, and met a hackman that stood on the street. I discovered my father was not in the Larh house and followed the hackman's directions and he led me to a part of the town and *siad*, "Your father is over in there," and thereupon I drove directly home. I did not take my father home.

I think it was immediately after that my father left home and went to the St. Nicholas hotel.

I thought it was strange Mrs. Emory Waldron would allow my father to come there and use her house while in a drunken condition. I think my father and I went to the farm that morning together. I believe I left him at the farm and went back home, possibly between ten and twelve o'clock in the forenoon. He was sober when he left home and he was living at home at that time. I know he was intoxicated when he left Mrs. Emory Waldron's.

451 *Testimony of Mrs. Mary A. Waldron, the Plaintiff.*

Recalled and examined by Mr. ALDRICH:

I heard Mr. Brannan's testimony.

Q. I believe he testified that on one occasion you took a pistol in your hand and said, "For two cents you would shoot him," or something to that effect. After hearing his testimony do you still deny that?

To which question counsel for the defendant objected on the ground that the witness had been already interrogated in regard thereto.

The court overruled the objection; to which ruling of the court the defendant, by her counsel, then and there duly excepted.

A. I do, most emphatically.

(Witness is handed a book and identifies it as being a journal kept by Edward H. Waldron when he was her husband and as being in his handwriting and for the year 1875, and identifies entries under the date of September 17th, 1875, the tenth anniversary of her marriage to Edward H. Waldron, as being in his handwriting.)

The said entry was offered in evidence by the plaintiff's counsel and was as follows:

"FRIDAY, 17*th Sept.*, '75.

"This is the tenth anniversary of our marriage; have had ten years of married life and none could be more pleasant, a good wife, good and comfortable home, and make extra pleasant by my excellent wife and nice boy, Winnie, who is now in his seventh year, being six years old the 11th day of May last."

This is a diary kept by Mr. Waldron and left with me when he left home. I discovered it after he had left.

Which was all the testimony offered on the trial of said cause.

452 *Argument of Mr. Aldrich.*

And thereupon Mr. Aldrich, on behalf of the plaintiff, proceeded to address the jury, in the course of which argument he stated, among other things, the following:

"He (Mr. Waldron) came to Chicago in June, 1886. The testi-

mony of the wife and son is that upon the day he left they parted in peace and harmony; that he kissed them good-by; that everything was pleasant; that up to that time he had occupied the same room and bed, and they had lived together as husband and wife. The testimony is also that his continued absence, so far as it was represented to them at that time, was not anticipated. He may have had no notions even at that time—I will not say; if he had he has not himself disputed the fact (except as he has sworn to his secret intentions) that he did not make it manifest to the plaintiff in this case. He came here and, failing to return, there came the interview of July, 1886. At that time there is a conflict of testimony as to what occurred. The plaintiff says that she then learned for the first time that he did not expect to return. He then declared himself, for the first time, as having permanently abandoned his home and family."

To which statement counsel for the defendant objected on the ground that the evidence of the plaintiff on that subject had been stricken out of the record by the court, and that Edward H. Waldron had not been permitted to testify as to his statements to the plaintiff before he left his home at La Fayette in June, 1886, and then and there duly excepted to said statement.

Mr. Aldrich, for the plaintiff, stated that the evidence of the plaintiff on that subject had not been stricken out or excluded.

The COURT: I will have to trust the memory of the jury as to that.

453 Counsel for the plaintiff further stated to the jury, among other things, as follows:

"The defendant (in the divorce proceeding) admits upon the stand that he resorted to efforts for the purpose of procuring that divorce; he admits that he was guilty of threats. The plaintiff testifies that it was not with her will or by her desire that it was procured some months later. You will observe that during all the first part of the testimony in this case the attempt was made by the defense to show that Davie, who was the principal witness in this case, and was also the agent of Mr. Waldron, as he claimed, was the agent of the plaintiff here—that he was acting for her." * * *

I call your attention to these conflicts of testimony as to how often Davie and Waldron met on these occasions, because it will aid you in considering the value that is to be attached to their statement that Mr. Waldron knew nothing about the contents of that bill and nothing about the charges that were made therein. * * *

Mr. Waldron's testimony is that Davie came to Chicago on this matter innumerable times; that Davie brought the papers to him to sign in connection with this matter. * * * Mr. Behm was Mr. Waldron's attorney, and the power of attorney appointing him has been introduced in evidence, and he appeared for Mr. Waldron in the divorce proceedings. Mr. Behm says on this subject:

Q. "Through whom did you hold communication on that subject?

A. Mr. Robert Davie.

Q. State whether you met Mr. Davie prior to the granting of the divorce.

A. No, sir.

Q. Had no conversation with him at all?

A. No, sir.

454 Q. You had consultation with Mrs. Waldron?

A. Yes, sir."

* * * * * * *

And the judge granting the divorce testifies that Davie was the only witness upon the material facts of this divorce case.

Mr. William C. Wilson testified to her unwillingness to get a divorce; to her hesitancy. * * * It was starvation or the loss of property sooner or later, upon one side, and divorce procured under compulsion, on the ground of the fact that he had become enamored of Josephine P. Alexander, and if it was not procured upon that ground, gentlemen of the jury, it was a fraud in every sense of the term.

The divorce law of Indiana provides that a divorce can be procured for abandonment for two years. For what cause can a divorce be obtained in the State of Indiana? A divorce may be decreed upon application of the parties for the following abuses and no other: Adultery, except as hereinafter provided; impotency existing at the time of the marriage; abandonment for two years; cruel and inhuman treatment of either party by the other; habitual drunkenness by either party; the failure of the husband to make reasonable provision for his family for a period of two years; the conviction for his family for a period of two years; the conviction subsequent to the marriage, in any country, of either party, of an infamous crime.

These are the seven causes named in the statutes of the State of Indiana, which is in evidence before you, gentlemen of the jury, upon which a divorce can be obtained.

The only two that are referred to in this bill for divorce—the record is not here, I shall state it, and if it is challenged I shall read it when it comes—are these: That he had abandoned her. Is there any conflict in the evidence in this case that that abandon-

455 ment only extended from the 6th day of June up until the time this decree was entered the 21st day of June, 1887, a year. Is that a compliance with the statute calling for abandonment for two years? Nothing of the kind. Cruel and inhuman treatment. Hasn't Edward H. Waldron testified upon the stand in this case, and is there any dispute upon this subject, that there was no cruel and inhuman treatment upon his part in this case; that he had never been guilty of cruel and inhuman treatment, and has the statement been challenged that cruel and inhuman treatment under the laws of the State of Indiana only means acts of cruelty coupled with personal violence? The physical and men-

tal health of the defendant must be endangered. Nobody will challenge that proposition, and I challenge the gentlemen to do so. If they seek to know the law upon that subject I cite them to the 57th Indiana upon that subject.

There has been no cruelty of anything of the kind. They say there is no charge of adultery in this case. The records says that there was cruel and inhuman treatment, and that he was enamoured of Josephine P. Alexander in this case. That did not endanger her physical health. There was no physical violence in that. Mr. Davie was the only witness upon this subject. His testimony has been read to you in this case, gentlemen of the jury, and he has said to you and it has been said to you by him that he had no intimacy with and even did not know Edward H. Waldron until he came to Chicago, and Edward H. Waldron from that stand there has testified, gentlemen of the jury, that up to the time he came to Chicago he had no acquaintance with Robert Davie. It stands undisputed in this case, gentlemen of the jury, that Robert Davey was the only witness upon the material facts in this case. He was the agent, the paid agent, of Edward H. Waldron. Edward H. Waldron is too able a man, he has too much brains, he is too cute, he is too slick, gentlemen of the jury, not to apply any other
456 terms but those that are fitting to him, to suppose that a decree could be obtained in Indiana for abandonment or for cruelty or for inhuman treatment. Edward H. Waldron knew as well as you know that he could only get a divorce and it could only be procured on the ground of his adultery with somebody. He knew that. Robert Davie knew it. By reason of this non-acquaintance at that time Robert Davie could not have testified to any of the acts of cruelty. How did Robert Davie acquire his information? By these innumerable visits to Chicago to which Edward H. Waldron has testified. That is the way he got his information, and in view of the testimony in this case; in view of the relations of the parties; in view of the fact, gentlemen of the jury, that Edward H. Waldron himself has testified upon the stand that he had talked with the defendant on two occasions about these divorce matters, and that fact that he was living at this house at that time, with that fact before you, you cannot believe, gentlemen of the jury, that it was unpremeditated, that it was unknown, or anything of that kind.

Mr. McCoy, for the defendant, excepted to the statement of counsel that Robert Davie had obtained the information to which he testified in the divorce proceeding in Chicago or from Edward H. Waldron on the ground that the court had excluded the evidence of Robert Davie on that subject.

Mr. McCoy: "I read a question here as to whether or not Mr. Davie obtained his information in Chicago, and he replied that he did not, and that extra question and answer was stricken out as being within the character of the evidence excluded by the court; therefore I do not think it is proper to comment upon to the jury."

457 Mr. Aldrich, for the plaintiff, further stated to the jury: "The court has admitted evidence here that Mr. Davie was the only witness upon the trial of this case. The fact that he was not acquainted with Edward H. Waldron in this case is testified to both by him and by Edward H. Waldron. The fact that they were frequently in consultation is testified to by both of them; that they met very frequently by the testimony of Edward H. Waldron. I submit to you, gentlemen, that any information upon that subject, whether it was cruelty or whether it was cruel and inhuman treatment or whether it was abandonment, must have been acquired by Mr. Davie while he was in Chicago."

To which statement of counsel for the plaintiff Mr. McCoy, counsel for the defendant, objected and then and there duly excepted for the reasons above stated.

Mr. McCoy, counsel for the defendant, further objected to the statements of the counsel for the plaintiff to the jury as to the laws of Indiana on the subject of divorce and the argument that it must have been granted on the grounds alleged in the complaint in the divorce proceeding reflecting upon the character of the defendant, Josephine P. Alexander, and then and there duly excepted to such statements.

And thereupon, after further arguments to the jury by Mr. Aldrich on behalf of the plaintiff and arguments to the jury by Mr. McCoy and Mr. Walker on behalf of the defendant, Mr. Dexter addressed the jury in a closing argument on behalf of the plaintiff, in the course of which, among other things, he stated as follows:

458 *Mr. Dexter's Closing Argument.*

What about the divorce? They have tried to show that Davie acted as her agent. You know where this divorce came from. Where did the $2,800 come from to pay the expenses of the divorce? Is Davie's grave to be invaded? *Is* Davie's bones to be held up to execration here and he charged with being the originator and projector of what these gentlemen say are vile scandals? They say Waldron would not invent them against his present wife; Waldron would not degrade his second marriage. Didn't he degrade his first? Put him on the stand and let him swear to what he did about his first marriage, and then tax your imaginations, if you can, to go beyond what he would refuse to do in regard to his second or third.

Now, let me call your attention to some of the evidence about the divorce proceedings. Judge Lowry, of the superior court of Tippecanoe county, Indiana, says:

"I presided in the case of Mary A. Waldron against Edward H. Waldron, proceeding for divorce.

Q You may state who was the witness for the complainant in the case.

A. Beside the witness as to the residence, whom I do not now remember, Mr. Davie was the principal witness. Judge Behm was

the defendant's attorney. A power of attorney had been filed here from Waldron to Behm to appear.

Q. Through whom did you hold communication on that subject?

A. Through Mr. Robert Davie. I think Davie was a witness as to the material fact in that case. I was one of the witnesses as to the residence.

Q. Then, as I understand you, Mr. Davie was the only one that testified to the material facts in the case aside from the residence?

A. That is my recollection."

459 Now, gentlemen, is it possible for them to escape the responsibility for that divorce proceeding so far as this plan goes, this general co-operative movement between Waldron and the defendant? Of course, it was never expected at that time that this divorce proceeding would come to light. It was going on down there in Indiana, and they were very anxious. Waldron was hurrying up the divorce, and the defendant was anxious it should be got. Their hastened marriage soon after that shows that fact, and in considering the evidence in relation to the divorce bear in mind it did not seem at all probable that that would ever be made public.

Now, what was that divorce? Gentlemen, this subject of divorce was spoken of, you recollect, between Waldron and the defendant. It was a matter of conversation, he says, on one or two occasions, and you have heard readhis language on that subject. Now, I assert that here was a wicked scheme against the established order of society and the rights of this woman, and that the defendant shall not escape here by throwing up false issues. Are there any grounds of divorce here except those which sustain this action?

Mr. WALKER, for defendant: I enter my objection to the statement of counsel.

The COURT: All that was in the declaration the court excluded.

Mr. DEXTER: I shall be governed exactly by what was admitted in my argument. I claim the right to argue simply the questions of fact arising from the evidence which has been admitted, and I shall contrive to do it. The conclusion that it leads to counsel shrinks from; it hurts him. The jury cannot be fogged about it. There is something underneath here that is reached for, and you will lay hold of it, and you will not be deceived about it.

460 There will be no effectual effort to keep your minds from coming to the conclusion that it ought to reach. I shall confine myself to the statements admitted by the court and read to the jury.

What was charged in the bill? That Waldron has for more than a year past been guilty of inhuman and cruel treatment of this plaintiff. In what? That he inflicted personal violence. He swears he did not. He did not inflict personal violence. Now, mark it, the next clause is: "In this, that he has become enamoured of one Josephine P. Alexander." That is in the bill, and that has been read to you. Webster says enamored means inflamed with love. Their theory is that he was enamored of her and she not of him, but the result shows that she married him.

There could not have been any divorce on the ground of abandonment. Two years had not elapsed. No cruelty, for it is sworn that there was none. Now, where did this suggestion come from? That is in the complaint; that is to be found in the divorce proceedings that they put on foot. Did Davie dream it? Did it spring from a midnight fantasy and fancy of Davie? Where could it come from without proceeding from the man that knew the fact, forgetful, in hot haste, of the danger of exposure, and anxious only to carry out an unholy, unrighteous dissolution to permit another union equally unholy and unrighteous.

Further, the bill alleges that he refuses and for the last year has refused to return to his home or to this plaintiff, and also refuses to provide for the plaintiff's support, but, on the contrary, has absolutely refused so to so, giving orders to his agents to do nothing for the support of the plaintiff, and threatens, by his agent, to take and carry away all the household goods and drive her from their home; that she has remonstrated with him in regard to his course, but is only met by scorn and rebuff, and that the plaintiff charges
461 and believes it to be true that the defendant's sole and only purpose for so doing is induced by his attachment to said Josephine.

Who knew better than Waldron, and by that time his knowledge had become hers, that while a technical defense and hair-splitting points were planned they would be effective? But I say that Waldron refuses to recognize the philosophy of the truth here in this case, the mainsprings that move these parties, and the prayer of the bill is—

"Seventh. The plaintiff prays for decree of divorce for misconduct of the defendant on account of his cruel and inhuman treatment of this plaintiff"—neither cruel nor inhuman treatment proven save in the language of the bill—"in this, that he has become enamored of one Josephine P. Alexander, a married woman."

A husband and father can come and promote an intimacy with another woman to the point of alleging that he is enamored of her—to the point of alleging that he is inflamed with love for her, and she consenting thereto, as the evidence in the case shows, and can go on and get their divorce, and, the divorce thus obtained being secured, he can lead her to the alter, and this you call sustaining the sacredness of marriage.

And thereupon, after further arguments, Mr. Dexter concluded his closing address to the jury on behalf of the plaintiff.

Defendant's Instructions Refused.

And thereupon counsel for the defendant requested the court to give to the jury in his charge the following, among other, instructions, viz:

462 First. The defendant requests the court to charge the jury that the evidence does not support the charges alleged in the declaration, and your verdict must, therefore, be for the defendant.

But the court refused to give said instruction.

To which ruling of the court counsel for the defendant then and there duly excepted.

Second. The defendant requests the court to charge the jury that—

This is an action wherein Mary Waldron, the plaintiff, sues Josephine P. Waldron, formerly Josephine P. Alexander, the defendant, for wrongfully and maliciously alienating the affections of the plaintiff's husband, Edward W. Waldron, and the court instructs you that before the plaintiff can recover you must find from the evidence—

First. That at the time of the wrong complained of the plaintiff was rightfully entitled to the affections of Edward H. Waldron, and that his affections were wrongfully alienated from the plaintiff.

But the court refused to give said instructions.

To which ruling of the court counsel for defendant then and there duly excepted.

Third. The defendant requests the court to instruct the jury further as follows:

If you should find for the plaintiff in estimating the damages, if you find from the evidence the plaintiff suffered any damages, you are to take into consideration all the circumstances of the case as disclosed by the evidence, and if you should find that before and at the time of the wrong complained of the husband, Edward H. Waldron, had no affection for the plaintiff and that he was not living with her and refused to live with her, then your verdict must be for nominal damages only.

COURT: "This lacks a necessary qualification; all that is good is covered by the general charge."

463 But the court refused to give the said instruction.

To which ruling of the court counsel for defendant then and there duly excepted.

Fourth. The defendant requests the court to further instruct the jury as follows:

The court instructs you that the defendant was not a party to the divorce proceedings between the plaintiff and Edward H. Waldron in Indiana, and that nothing contained in those proceedings or connected with them is evidence against the defendant in this case.

Better covered by the general charge. The judgment of divorce is evidence against the defendant.

But the court refused to give said instruction.

To which ruling of the court counsel for the defendant then and there duly excepted.

Fifth. The defendant requests the court to further charge the jury as follows:

The plaintiff claims that by the wrongful act of the defendant she has been deprived of the affections and society of her husband. The court instructs you that the fact that plaintiff was married to Edward H. Waldron at the time of the wrong complained of

cannot be considered, or itself, proof conclusive of that mutual regard and love which should be entertained by husband and wife, and where one of them seeks to recover damages for the loss of affection and society of the other the defendant has the right to show to the jury the real feelings that existed between them, and it is for you to find from all the evidence whether or not at and just before the time of the wrong complained of there existed between plaintiff and her then husband, Edward H. Waldron, the love, affection, and esteem which ordinarily exist between husband and wife, and whether the plaintiff was deprived of the love and affection of her husband, Edward H. Waldron, by the wrongful interference and solicitation of the defendant, or whether that love and affection had already been lost to the plaintiff through other causes for which the defendant was not responsible.

Not given, as lacking some qualifications and as being in substance covered by other charges.

464 But the court refused to give said instruction.

To which ruling of the court counsel for the defendant then and there duly excepted.

Sixth. The defendant requests the court to further instruct the jury as follows:

If you find from the evidence that the husband, Edward H. Waldron, voluntarily left the plaintiff without the interference or solicitation of the defendant, and that he had ceased to love her for reasons and causes with which the defendant had nothing to do, and that the defendant was not guilty of the wrongful acts complained of, then your verdict must be for the defendant.

But the court refused to give said instructions.

To which ruling of the court counsel for the defendant then and there duly excepted.

And thereupon the court instructed the jury as follows:

Charge Given to the Jury by Judge Bunn, February 3rd, 1890.

The COURT: Gentlemen, I shall give you some instructions at the request of counsel, though I think they are mainly covered, perhaps, by the general charge, but I will give them to you because I think they are right and express the law of the case.

The plaintiff requests me to charge the jury as follows, and I give you this charge:

First. It has been already held in this case that an action may be maintained by a wife for the alienation of the affection of her husband, provided the facts are as alleged in the complaint. The wife is entitled, as a matter of right, not only to the support and maintenance of the husband, but also to love and affection. It follows that if any woman by the exercise of arts and wiles alienates the affections of the husband from his wife or entices him away from her presence so that she has not the consolation and advan-

465 tage of his society and does not receive adequate support from him an action may be maintained for such an injury.

It is incumbent upon the plaintiff in this cause to prove to you,

before recovery can be had, not simply that the defendant harbored her husband, Mr. Waldron, but that she enticed him away; that she did something by which his former affections were alienated—by which he afterwards — to perform those duties which a husband always owes to his wife for support. In such an action as this the same rule must prevail that prevails in the case of an action by the husband against a man for enticing away his wife; and I therefore charge you that there can be no recover- in this action unless the defendant intentionally alienated the affections of Waldron and intentionally and maliciously enticed him away from her presence and thus induced him to withhold love, affection, and support from the plaintiff, which he by law owed her.

The term malice as used in this charge does not necessarily mean that which proceeds from spiteful, malignant, or revengeful disposition, but a conduct injurious to another, though proceeding from an ill-regulated mind, not sufficiently cautious before it occasions injury to another. If the conduct of the defendant was unjustifiable and wrongful and intended to and actually caused the injury complained of by the *defendant*, is a question for the jury. Malice in law is implied by such conduct, and the plaintiff would be entitled to recover.

In determining whether the defendant enticed the plaintiff's husband away you should take into consideration the situation and circumstances of the parties as adduced in the evidence. You may consider whether the defendant knew that Edward H. Waldron was a married man during the period of their association prior to the divorce, is such association has been shown; whether she maintained improper relations to him; whether she sought his society, enjoyed it at her house and elsewhere; whether she paid him atten-
466 tions which, in view of his relations with the plaintiff, were, if known, calculated to win his affections from his wife and home. If you find that the defendant maintained adulterous relations with the plaintiff's husband under circumstances and in places that must have been her seeking rather than his, and that these relations and other evidence in the case show that she thereby alienated the affections of the plaintiff's husband, then you should find for the plaintiff and assess her damages under the rule I announce.

And it is not necessary for the plaintiff in this case to prove that the defendant and Edward H. Waldron maintained illicit or adulterous relations. It is enough if you are satisfied by a preponderance of the evidence that the defendant enticed the plaintiff's husband or has wilfully pursued such a course of conduct, at the time knowing him to be a married man, as was intended to and induced him to abandon his home and the society of his wife and cease to maintain those duties and relations which as a husband he was bound to maintain unless the plaintiff by conduct sufficient to dissolve the marriage ties had absolved him therefrom.

The evidence shows without conflict that the plaintiff and her former husband had finally separated, and that said husband is now married to the defendant in this case. It also shows that the divorce

was obtained at the suit of the plaintiff in this case. You are at liberty to take into consideration the facts and circumstances of bringing about such divorce in so far as from the evidence you find that the defendant had any connection therewith, and you are not to conclude that because the plaintiff here procured a divorce from the husband or had quarrels with him that therefore there is no right of action if you at the same time find that the defendant did purposely and wilfully enticed the husband away with knowledge of his duty to another.

The last instruction is upon the measure of damages, but the court chooses to make that instruction in its own language.

467 These instructions I give you at the request of the defendant's counsel; those which I give you at all. Some of them are not given the same as the others.

This is an action where Mary Waldron, the plaintiff, sues Josephine P. Waldron, formerly Josephine P. Alexander, the defendant, for wrongfully and maliciously alienating the affections of the plaintiff's husband, Edward H. Waldron, and the court instructs you that before the plaintiff can recover you must find from the evidence—

Second. That it was the defendant who wilfully and wrongfully alienated the affections of Edward H. Waldron from the plaintiff—that is, you must find that it was the defendant who wilfully and wrongfully alienated the affections of Edward H. Waldron from the plaintiff. It is not sufficient for the plaintiff to show that her then husband ceased to love her and live with her, but before she can recover a verdict she must show to you and you must find from the evidence that she lost the affection and society of her then husband by reason of the wrongful interference and solicitation of the defendant. If you should find from the evidence that Edward H. Waldron left the plaintiff and ceased to love her of his own free will and without the interference and solicitation of the defendant, then your verdict must be for the defendant.

Or, if you find from the evidence that Edward H. Waldron left the plaintiff and ceased to love her, and that he did so on account of quarrels and differences between themselves and not by reason of the solicitation or interference of the defendant, then your verdict must be for the defendant.

The court instructs you that in order to maintain this action the plaintiff must show by evidence that she was deprived of the affection and society of her then husband, Edward H. Wal-

468 dron, by reason of the wrongful solicitation and interference of the defendant, and it is not sufficient for her to show that she, the plaintiff, was the wife of Waldron; that he left her, and that afterwards a divorce was granted; that he knew the defendant and called upon her and spent some time at her home, or that they drove together, for unless you find from the evidence that the separation between the plaintiff and her then husband and the loss of his affection was brought about by the wrongful interference of the defendant, then your verdict must be for the defendant.

This is an action in which the plaintiff sues to recover $100,000

damages for the alienation of her husband's affections and for the loss of his society. The court instructs you that unless you find the plaintiff lost the society and affection of her then husband by reason of the wrongful interference of the defendant your verdict must be for the defendant.

That is all the special instructions the court thinks it ought to give.

Gentlemen of the jury, this action is brought by the plaintiff, Mary H. Waldron, a citizen of the State of Indiana, residing at La Fayette, in said State, against Josephine P. Waldron, a citizen of Illinois, residing at Chicago, to recover damages for the alleged wrongful act in alienating the affections of the plaintiff's husband, Edward H. Waldron, from the plaintiff and depriving her of the comfort, fellowship, society, and assistance of her said husband.

There are in the plaintiff's declaration two distinct statements of the charge which the plaintiff makes and relies upon as a cause of action against the defendant. The fact is:

"For that whereas the said defendant, contriving and wrongfully, wickedly, and unjustly intending to injure the said plaintiff and to deprive her of the comfort, fellowship, society, aid, and assist-
469 ance of Edward H. Waldron, the then husband of the said plaintiff, and to alienate and destroy his affection for the said plaintiff, on, to wit, the 6th day of June, 1886, and on divers other days and times between the said 6th day of June, 1886, and the 21st day of June, 1887, wrongfully, wickedly, and unjustly debauched and carnally knew the said Edward H. Waldron, then and there still being the husband of the plaintiff, and thereby the affection of the said Edward H. Waldron for the said plaintiff was then and there alienated and destroyed, and also by reason of the premises the said plaintiff from thence hitherto wholly lost and was deprived of the comfort, fellowship, society, and assistance of the said Edward H. Waldron, her said husband, in her domestic affairs, which the said plaintiff during all that time ought to have had and otherwise might and would have had."

The second statement of the plaintiff's charge is that—

"That whereas the said defendant contriving and wrongfully, wickedly, and injuriously intending to injure the said plaintiff and to deprive her of the comfort, fellowship, society, aid, and assistance of Edward H. Waldron, the then husband of the plaintiff, and to alienate and destroy his affection for the said plaintiff, on the 6th day of June, 1886, and on divers other days and times between said 6th day of June, 1886, and the 21st day of June, 1887, wrongfully and unjustly sought and made the acquaintance of Edward H. Waldron, the husband of the plaintiff, and then and there, well knowing that said Edward H. Waldron was the husband of said plaintiff, wrongfully, wickedly, and unjustly besought, persuaded, and allured the said Edward H. Waldron to desert and abandon the said plaintiff, and thereby the affections of Edward H. Waldron for the plaintiff were alienated and destroyed; and also by reason of the premises the plaintiff has from thence hitherto been wholly deprived of the affection, society, and assistance of her said husband

in her domestic affairs which the plaintiff during all that time ought to have had and otherwise might and would have had, and also by reason of the premises the said plaintiff during all
470 said time from thence hitherto suffered great mental anguish and loss of social reputation."

These are the two special statements of the plaintiff's cause of action against the defendant. You will notice that the substance of the first is that the defendant, intending to injure the plaintiff, debauched and carnally knew the plaintiff's husband, and thereby the affection of the husband for his wife was alienated and destroyed, and the plaintiff deprived of his affection, comfort, society, and fellowship.

The substance of the second charge is that the defendant, wrongfully intending to injure the plaintiff and to alienate and destroy his affection for the plaintiff, wrongfully and unjustly sought and made the acquaintance of the plaintiff's husband and wrongfully, wickedly, and unjustly besought, persuaded, and enticed the said Waldron to desert and abandon the plaintiff, and thereby alienated and destroyed his affection for the plaintiff.

These are two several and distinct statements of the same cause of action intended to meet the proofs as they should appear on the trial. The substance and material part of each is the same, to wit, that the defendant wrongfully and intentionally, either by debauching and carnally knowing the plaintiff's husband or by beseeching, persuading, or alluring him to desert and abandon the plaintiff, alienated and destroyed his affections for the plaintiff, and so deprived the plaintiff of his affection, society, and fellowship.

There is no doubt, upon proper and sufficient proof, such an action may be maintained, and the burden of the jury's duty will be to determine whether the charges or either of them in the declaration made has been proven to your satisfaction by the evidence.

A man may maintain an action against another man for
471 intentionally and wrongfully alienating the affections of his wife or for enticing or alluring her to leave her husband. A woman may also maintain an action against another woman for wrongfully or intentionally destroying the affection of her husband or persuading, enticing, or alluring him to desert or abandon her. The relation of marriage is a sacred and important relation. It is the foundation of family life and social happiness, and the family is in an important sense the foundation of the state in free and enlightened countries. This relationship is jealously guarded by the law, and should be revered by all good citizens. There is no greater injury, socially-speaking, which one person can do to another than to wantonly interfere with and break up the marital life of husband and wife. For such an injury to the rights of the individual, the law gives a right of action on a case for damages against the wrongdoer in favor of the party injured. Such a charge, however, is one easily made, and, as it affects the person, the property, and the character of the person charged with the wrong, it should be proved by testimony convincing and satisfactory to the minds and consciences of the jury. The burden of proof is always upon the person mak-

ing such a charge, and the charge should not be assumed to be true without evidence or without a preponderance *to* evidence to support it. The evidence adduced may be circumstantial in character, and usually is in such cases, but it should be sufficient and satisfactory to induce the jury to believe the charges to be true.

The court will not undertake to discuss the evidence at length before you. It is very voluminous, though confined to but few material points, and it has been very fully and elaborately discussed by counsel. The court will content itself by calling your attention, as it has, to the one material issue in the case, to a statement of
472 some of the leading facts *taht* are either undisputed or clearly proven by the testimony, and to the tendency and bearing of the evidence upon either side. It will be well for the jury to have these undisputed facts and their dates well fixed in your minds in order to understand and weigh to the best advantage the other evidence, and so determine the bearing of all upon the one main issue in the case.

The plaintiff, Mary Waldron, then Mary Beauchamp, was married to Edward H. Waldron on September 17th, 1865, at Syracuse, New York, while there on a temporary visit. They had, before that time, both resided at La Fayette, in the State of Indiana, he boarding in her mother's family. Upon their marriage they returned to La Fayette and resided there and lived together as husband and wife for some twenty years or more, excepting that during about two years of that time they lived at St. Louis. They had one child by the marriage, Winfield Willard Waldron, born on the 11th day of May, 1869, a young man now twenty-one years old and a witness for the plaintiff on this trial.

The plaintiff says she was born in 1833. Before her marriage to Waldron she had been previously matted to William Beauchamp about 1857 or 1858, when she was about 24 or 25 years old. This marriage seems to have been an unhappy one. The plaintiff admits that she had a child some two months after the marriage, whom they named Edward Beauchamp. This son grew up to be a young man, and seems to have been the cause of some contention and trouble between the plaintiff and her husband, with whom he lived after her marriage to Waldron. He was profligate and shiftless, was convicted of crime, sentenced for years to the State prison, and afterwards died. At the time the plaintiff married Mr. Waldron, in 1865, she was about 32 years old and Waldron 21.

Previous to the marriage and about the year 1860, some three years after the marriage to Beauchamp, she obtained a di-
473 vorce from Beauchamp on the ground of desertion and failure to support, she all the time residing at La Fayette, Indiana.

The defendant was married to E. S. Alexander September 23, 1857. They lived together as husband and wife until his death on February 23, 1857. Waldron and Alexander were both railroad men and friends, and the two families visited back and forth occasionally for many years previous to the death of Alexander.

In June, 1886, Waldron left the plaintiff and came to Chicago

and never lived with her after. He has since that time resided in Chicago. On June 20, 1887, the plaintiff filed a bill for a divorce in Tippecanoe county court in Indiana against her husband, E. H. Waldron. His appearance in the case was immediately entered, and, on June 21, a decree of divorce was rendered dissolving the marriage contract relation between them absolutely.

The effect of that decree was to free both of the parties from the obligation of the previous existing marriage relation between them, and to leave each of the parties free to contract marriage with other persons.

In the fall of 1887, on October 25, the defendant was married to E. H. Waldron, and since that time they have lived together in Chicago as husband and wife.

These are some of the leading and undisputed facts in the case and to be considered by the jury in connection with all the other evidence in the case in determining the question here—the main issue as to whether the defendant is guilty or not guilty of the charges contained in the plaintiff's declaration. It will be noticed and borne in mind by the jury that the charges made against the defendant relate to the time between June 6th, 1886, when Waldron came to Chicago to live, and June 21, 1887, the time when the plaintiff obtained her divorce from her husband, a period of a little more than one year, and that is the period to which
474 the plaintiff's evidence is mainly directed, so far as the charges against the defendant are concerned.

The plaintiff can either recover by proving substantially the allegations contained in one or other of the two counts of her declaration; she cannot maintain her action by showing that he- husband left her, although without good cause, came to Chicago, became intimate with the defendant, fell in love, and *and* finally married her. The defendant cannot legally be made to answer in person or property on account of the shortcomings and misconduct, if such exist, of E. H. Waldron. She can be made to suffer on account of her personal wrong, knowingly committed by her in the manner charged, against the marital rights of the plaintiff. A woman cannot be charged in such an action because a married man has become enamored of her, although after he becomes divorced from his wife she consents to marry him. There must be something more; there must be a direct interference on her part, a wrongful act or acts shown, whereby it is made to appear, to the satisfaction of the jury, as charged in this case, that she has wrongfully alienated the affections of the husband from the wife in one of the ways charged, either by debauching him or by persuading or alluring him to desert and abandon the plaintiff or in some way charged in the declaration. If E. H. Waldron alienated his own affections from his wife or if they were alienated by the plaintiff's own conduct or by Waldron's own conduct, or both, without the interference of the defendant, or if they were alienated by any other cause, known or unknown, over which the defendant had no control or exercised no action or intentional direction or influence, then the plaintiff, howsoever unfortunate or wronged, cannot have her action against the defendant.

The defendant married E. D. Waldron in October, 1887, a year and eight months after her former husband's death and four
475 months after the decree of divorce dissolved the marriage relation between Mary Waldron and E. H. Waldron. She had an undoubted right to marry him when she did, and any intimacy existing between them after the marital relations between the plaintiff and Waldron were dissolved cannot be imputed as a wrong in this action; the wrongful act must have been committed previous to the divorce of June 21, 1887.

Though alleged in one count of the declaration, I do not think it necessary to the plaintiff's case to prove that criminal relations ever existed between Waldron and the defendant. To find the defendant guilty under the first count this would be necessary, but under the second count it would be enough to prove that she wrongfully persuaded, enticed, or allured him, Waldron, to desert and abandon the plaintiff, whereby the affections of Waldron for the plaintiff were alienated and destroyed.

Did the defendant between the times alleged lead E. H. Waldron from the path of virtue? Did she wrongfully debauch and carnally know him, whereby his affection for the plaintiff was alienated and destroyed, or did she wrongfully persuade, entice, or allure him to desert and abandon the plaintiff, whereby the affection of him, Waldron, for the plaintiff was alienated and destroyed?

We know as a matter of common knowledge and observation that as a general rule men woo and women are wooed and won; that men seduce and allure and lead women from the path of virtue, and that women are allured, seduced, and led astray; but we also know from common observation that this general rule does not always hold, and that sometimes women woo men; that sometimes women allure, seduce, and debauch men; that women upon occasion induce, allure, and persuade men to abandon and desert their wives and form new relations, lawful or unlawful. It will be for the jury to say, from all the evidence, what were the facts in this case and whether the issue stands proved or unproved.

476 The plaintiff's evidence is directed to support the affirmative of the issue. It tends to show that previous to June 6th, 1886, from the time of their marriage in 1865 Mrs. Waldron and her husband had lived an ordinarily peaceful and happy married life; that she had a strong affection for her husband; that between June 6th, 1886, and June 21st, 1887, after Waldron came to Chicago terms of friendship and intimacy sprang up and grew into an unlawful proportion between Mr. Waldron and the defendant, then Mrs. Alexander; that he, Waldron, was seen at her home on Michigan avenue, in this city, and at almost all times of the day and in the morning and evening; that they rode out together in her own carriage, in the daytime and in the evening, on the streets and in the parks; that on one occasion in Lincoln park—on one or more occasions in the park—they left the carriage in the evening and took a walk together in the park and afterwards returned to the carriage; that terms of endearment between them as of lovers were overheard; that on one or more occasions she kissed him and

was heard to say that she loved him, and that on one occasion when she was ill he, the defendant (?), lay upon her bed in the presence of other persons; that they were seen to embrace each other; that during this same period he ceased to provide for his wife's support in La Fayette; that he deserted and abandoned her and failed to provide and care for her.

The defendant's testimony is directed to disprove this issue and to deny and contradict the case attempted to be made by the plaintiff. Mr. Waldron and his wife, the defendant, flatly and positively deny that any unusual or improper relation existed between them prior to their engagement in the fall of 1887. They deny that terms of endearment passed between them; that she ever kissed him or said she loved him; that he was ever seen lying upon her bed, or that they ever embraced or left the carriage and walked together in the park.

477 The defendant's evidence is directed to prove that the marriage relations between Waldron and the plaintiff were infelicitous and unhappy; that at the time of the marriage in 1865 she concealed from him the fact, of which he says he had no knowledge, that she had lost her maiden virtue before her marriage to William Beauchamp in 1857 or '8, and that she had a child about two months after her said marriage, as well as the fact that she obtained a divorce from Beauchamp, and that he was still living, whom Waldron supposed, at the time of the marriage to the plaintiff, to be dead; that she concealed from him the fact that she was a divorced woman rather than a widow; that these concealments operated to injure and destroy the respect and affection he had entertained for his wife and would otherwise have entertained.

That after the discovery of these things their marriage life was unhappy; that he lost his respect and regard for her; that she was constantly jealous of him and of his relations to other women, and this fact constantly made trouble between them; that he left her in 1884 and '5 on one or two occasions, declaring an intent never to return to live with her; that after living apart for several weeks or months he was persuaded by his wife and their friends to return and live with her, and did so return, *b*ot because he was reconciled to or loved or respected her, but for the good of their son, Willard Winfield Waldron; that he finally left her in June, 1886, with the full, firm, and declared intention never to return; that his affections for his former wife were destroyed and alienated previous to his coming to Chicago, June, 1886, and by *caesed* disconnected with any act or influence done or exerted on the part of Mrs. Alexander and over which she had no control.

Gentlemen, this main issue it will be your duty to decide according as your believe the very truth to be from the evi-
478 dence, the burden being upon the plaintiff to satisfy you by at least a preponderance in the testimony. You are to take the law and the evidence as your only guide, and without fear or favor follow them to a legitimate and just conclusion. If you do justice upon the law and the testimony given you in court, free from all under considerations, you will have fully discharged

the obligation of your several oaths and may safely allow the consequences to take care of themselves.

The weight and credence to be given to the testimony of any witness is a matter for the jury under all the circumstances. You will consider the circumstances under which they severally give their testimony; their interest, if any, in the case; their bias or inclination, if any, to favor one side or the other; their manner and conduct upon the stand; the consistency and probability or want of these in their statements, and how they are corroborated or contradicted by other witnesses or by known facts in the case. If, under all the circumstances, you believe that little credit should be given a witness, or that this evidence cannot be relied upon, it will be your privilege to give him as little credence as in justice you may think right and proper or reject his testimony altogether.

There has been an attempt to impeach two or more of the witnesses. One method of discrediting a witness is by showing that he has made statements out of court touching the cause that are inconsistent with his testimony or would go to discredit him before the jury. So far as I know, it is a uniform rule of the courts in this country and in England to allow such impeaching testimony, first calling the attention of the witness upon cross-examination to the matters and asking him whether or not he has said or declared that which was intended to be proven. If he admits the words or declaration imputed to him the proof on the other
479 side becomes unnecessary, but if he denies it or says he does not recollect the adverse party may call a witness and contradict him. That is the course that was taken and allowed in this case; but it does not follow that because an attempt is made to impeach a witness and witnesses are brought to contradict him that therefore the witness is impeached and his testimony is to be discredited; that is a question for the jury. After the impeaching testimony is in the jury are to consider both together and give such credit, and no other or more, to the testimony as you may think you ought to under the circumstances.

The court has already adjudged that the decree of divorce obtained by the plaintiff from Mr. Waldron, June 21, 1887, is evidence conclusive in this case that the marriage relations between the plaintiff and Mr. Waldron were dissolved from the date of that decree. The decree of divorce acted on the *status* of the parties and dissolved the marriage relation theretofore existing between them and left each free to remarry, but the allegations contained in the bill of complaint in that case against Mrs. E. S. Alexander, the present defendant, are not evidence in this case and were excluded by the court.

The evidence also taken on the trial of that case is not competent evidence against the defendant in this case, and was also excluded. She, not being a party thereto, is not permitted to appear and cross-examine the witnesses. Nor should the jury assume or infer from anything in evidence in this case that the judgment of divorce was granted upon the ground of adultery, as that is not one of the grounds alleged in the bill of complaint, nor upon any ground of —

for any of the causes having reference to the conduct of the defendant in this case. Such an inference has been sought to be drawn by counsel from the proceedings in that case, but it is an inference not warranted by the record in evidence and unfair towards
480 the defendant. The jury will try this case upon the evidence produced on this trial, and not assume or infer that other evidence might have been produced here or was produced in some other case to which the defendant was not a party.

If the jury should find for the defendant you will have no question of damages to consider, and you will simply return a verdict of not guilty.

If you find for the plaintiff you will return a verdict that you find the defendant guilty, and you will assess the damages the plaintiff will be entitled in that case to recover. These should be proportionate and assessed according to the extent and character of the injury sustained by the plaintiff in consequence of the wrongful act of the defendant from a consideration of all the circumstances in evidence in the case. If the injury caused by the wrongful act of the defendant has been great the damages should be proportionately great. If the injury has been small the damages should be proportionately small.

If the jury should find from the evidence that the marital relations of the plaintiff and Waldron were unhappy; that when he left her and came to Chicago on June 6th, 1886, he had already lost his respect and affection for the plaintiff; that on account of the infelicity of the relations he then deserted and abandoned her without any hope of condonement or reconciliation, and that by reason of these things the marital relation existing between them was of little or no value to the plaintiff, the jury in such case may, in the exercise of a sound discretion, if they think they are justified on a full consideration of all the evidence, *to* return a verdict for a very small sum or for nominal damages; but this is a question of fact wholly for the jury.

The ground of damages will be mainly the injury to the plaintiff's feelings, the loss of her husband's support, his affections,
481 his aid, society, and companionship caused by the wrongful acts of the defendant, and should be fairly and dispassionately assessed according to the nature and extent of the injury so sustained by the plaintiff from a full and careful consideration of all the evidence and the circumstances in the case, including, of course, the evidence given you of the pecuniary circumstances of the defendant, and, in addition, the damages compensatory in character; if the jury believe that the injury was inflicted wantonly and maliciously, they may, in their discretion, add thereto such sum as you may think just and proper as exemplary or punatory damages as a punishment to the defendant.

482 To so much of which charge in words and figures as follows counsel for defendant objected and then and there duly excepted:

"We know as a matter of common knowledge and observation that, as a general rule, men woo and women are wooed and won;

that men seduce and allure and lead women from the path of virtue, and that women are allured, seduced, and led astray, but we also know that from common observation that this general rule does not always hold, and that sometimes women woo men; that sometimes women allure, seduce, and debauch men; that women upon occasions induce, allure, and persuade men to abandon and desert their wives and form new relations, lawful or unlawful. It will be for the jury to say, from all the evidence, what were the facts in this cause and whether the issue stands proved or unproved."

And to the further part of which said charge in words and figures as follows counsel for defendant objected and then and there duly excepted:

"The ground of damages will be mainly the injury to the plaintiff's feelings, the loss of her husband's support, his affections, his aid, society, and companionship caused by the wrongful acts of the defendant, and should be fairly and disparrionately assessed according to the nature and extent of the injury so sustained by the plaintiff from a full and careful consideration of all the evidence and circumstances in the case, including, of course, the evidence given you of the pecuniary circumstances of the defendant, and, in addition, damages compensatory in character; if the jury belief that the injury was inflicted wantonly and maliciously, you may, in your discretion, add thereto such sum as you may think just and proper as exemplary or punatory damages as a punishment to the defendant."

483 And thereupon the jury retired to consider of their verdict, and thereafter returned into court a verdict in favor of the plaintiff, which verdict was received and entered by the court, being in the sum of $17,500.00.

And thereupon counsel for the defendant moved the court to set aside the said verdict and to grant a new trial in said cause and filed their motion in writing in that behalf; which said motion was in words and figures as follows:

Motion for a New Trial.

UNITED STATES OF AMERICA, }
State of Illinois, Cook County. }

In the Circuit Court of the United States, Northern District of Illinois.

MARY WALDRON }
vs. }
JOSEPHINE P. WALDRON. }

Now comes the defendant, Josephine P. Waldron, by her attorneys, and moves the court to set aside the verdict rendered and to grant a new trial in this cause, and assigns the following reasons therefor.

1st. The court admitted on the trial improper evidence on the

part of the plaintiff over the objection of the attorneys for the defendant—that is to say:

a. The evidence of the plaintiff's witness, Henry Kirtland, as to the disposition by the defendant of the property and effects of her deceased husband.

b. The evidence of the plaintiff of the inducements, threats,
484 of coercion of her husband, Edward H. Waldron, as influencing her action in procuring a divorce in La Fayette, Indiana, in June, 1887.

c. The evidence of Willard W. Waldron of the agency, as well as the acts, of Edward H. Waldron in procuring or assisting in the procurement of said divorce.

d. The certified copy of the transcript of record of said divorce and the statement of the court that "the jury would take the record as conclusive."

e. The statutes of Indiana showing for what cause divorce would be granted in such State.

f. The evidence offered by the plaintiff showing the amount of money paid by said Edward H. Waldron for procuring said divorce.

g. Interrogatories 1 to 9, inclusive, and the answers thereto of the deposition of John M. Larue.

h. Interrogatories 1 to 10 and 12 to 17, inclusive, and the answers thereto of the deposition of A. Orth Bean; also redirect interrogatories 3, 4. and 5 and the answers thereto of the same witness.

i. Certain parts of the deposition of William C. Wilson, a witness on the part of the plaintiff.

2nd. The court on the trial of said cause erroneously admitted other improper evidence upon the part of the plaintiff over the objections of the defendant's attorneys.

3rd. The court erred in refusing to admit proper evidence offered by the defendant—that is to say:

a. The court refused to allow the defendant upon the cross-examination of the plaintiff to prove the conversation between herself and her said husband, Edward H. Waldron, and her admissions relative to permanent separation and the procurement of a divorce.

b. The court erred in refusing to permit the defendant upon the cross-examination of the plaintiff to prove the admissions and statements made to her by her said husband.

485 *c.* The court erred in refusing to permit the defendant upon the cross-examination of the plaintiff to prove the accusations and charges made by her said husband against the plaintiff in a conversation had between the husband and wife prior to the divorce.

d. The court erred in refusing to allow the defendant to prove by the plaintiff on her cross-examination the explanation made by her relative to matters connected with her divorce from her first husband, Beauchamp.

4th. The court erred in refusing to admit other proper evidence offered by the defendant.

5th. The court erred in refusing to charge the jury as requested by the defendant.

6th. The court erred in charging the jury as follows:

"We know as a matter of common knowledge and observation that as a general rule men woo and women are wooed and won; that men seduce and allure and lead women from the path of virtue, and that women are allured, seduced, and led astray, but we also know that from common observation that this general rule does not always hold, and that sometimes women woo men; that sometimes women allure, seduce, and debauch men; that women upon occasions induce, allure, and persuade men to abandon and desert their wives and form new relations, lawful or unlawful. It will be for the jury to say, from all the evidence, what were the facts in this cause and whether the issue stands proved or unproved."

7th. The court erred in its charge to the jury on the measure of plaintiff's damages as follows, to wit:

"The ground of damages will be mainly the injury to the plaintiff's feelings, the loss of her husband's support, his affections, his aid, society, and companionship caused by the wrongful acts of the defendant, and should be fairly and dispassionately assessed according to the nature and extent of the injury so sustained by
486 the plaintiff from a full and careful consideration of all the evidence and circumstances in the case, including, of course, the evidence given you of the pecuniary circumstances of the defendant, and, in addition, damages compensatory in character; if the jury believe that the injury was inflicted wantonly and maliciously, you may, in your discretion, add thereto such sum as you may think just and proper as exemplary or punatory damages as a punishment to the defendant."

The court erred in permitting plaintiff's attorneys in their closing argument over the objection of the defendant to comment upon and discuss the record of the divorce proceedings in Tippecanoe county, Indiana, and the evidence connected with such cause.

9th. The verdict of the jury is contrary to the law and the evidence.

10th. The damages awarded by the jury are excessive.

C. B. McCOY AND
E. WALKER,
Att'ys for Def't.

(Endorsed:) Filed M'ch 22, 1890. Wm. H. Bradley, clerk.

487 And thereupon the said motion of defendant for a new trial came on for hearing and was argued by counsel for the plaintiff and by counsel for the defendant, and, after hearing the said arguments, the court took the said cause under advisement.

And thereupon counsel for the plaintiff and for the defendant submitted to the court their briefs on said motion.

And thereupon, after consideration, the court overruled the said motion for a new trial.

To which ruling of the court in overruling the motion of said defendant for a new trial counsel for the defendant objected and then and there duly excepted.

And thereupon counsel for the defendant entered a motion in arrest of judgment upon the said verdict and filed their said motion in writing in words and figures as follows:

488 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for said District.

MARY A. WALDRON } Term No., 525; Gen. No., 20966. Action
vs. } on the Case.
JOSEPHINE P. WALDRON. }

Motion in Arrest of Judgment.

And now, in this day, the motion of the defendant to set aside the verdict and grant a new trial herein coming on to be heard and the court having announced as its conclusion that the said motion should be denied—

Comes now the said defendant, Josephine P. Waldron, by Charles B. McCoy, her attorney, and enters this motion in arrest of judgment and moves the court to perpetually stay the entry of a judgment in favor of the plaintiff and against the defendant upon the verdict in said cause rendered, and for the grounds of said motion now here shows the following, viz:

First. For that the declaration of the plaintiff in said cause sets forth two separate and distinct causes of action in separate counts in said declaration, and the said verdict is a general one in favor of the plaintiff, and the record does not disclose upon which of the said counts said verdict is rendered, and it is not sufficiently definite to furnish a basis for the entry of a judgment thereon.

Second. For that one of the counts in the plaintiff's declaration alleges as a cause of action the alienation by the defendant of the affections of one Edward H. Waldron from the plaintiff, he having formerly been her husband, while it appears from the undisputed proofs in the case that prior to the commencement
489 of this suit the said plaintiff, on her own application, had procured a divorce from the said Edward H. Waldron and thereby forever terminated her legal right to said affections and to recover compensation for the value thereof, and the plaintiff cannot recover upon that count in the declaration; yet, the verdict being a general one, the record fails to disclose but that it may have been rendered upon the said count, and it would therefore be error to enter judgment upon the said verdict.

Third. For that the causes of action alleged in the plaintiff's declaration arise by reason of the relation of husband and wife formerly existing between said plaintiff and one Edward H. Waldron, her former husband, and the said causes of action are not maintainable except by reason of the existence of such marriage rela-

tion; yet it appears by the undisputed proofs that prior to the commencement of said suit the plaintiff had voluntarily terminated the said relation of husband and wife by procuring a divorce from said Edward H. Waldron and thereby terminated her right to maintain this action. Wherefore the entry of judgment upon said verdict in favor of the plaintiff should be perpetually stayed.

CHARLES B. McCOY,
Defendant's Attorney.

(Endorsed:) Filed July 10, 1890. Wm. H. Bradley, clerk.

490 And thereupon the court, after considering the said motion in arrest of judgment, overruled the same.

To which ruling of the court upon the said motion in arrest of judgment and upon each ground therein stated counsel for the defendant then and there duly excepted.

And thereupon the court entered judgment in favor of the plaintiff and against the defendant upon the said verdict for the sum of $17,500.00 and costs of suit.

To which ruling of the court and the entry of said judgment counsel for the defendant objected and then and there duly excepted.

And because the matters and things above set forth do not fully appear of record the defendant presents this her bill of exceptions to be signed and sealed by the court according to law; which is accordingly done as of the 10th day of July, A. D. 1890.

R. BUNN, *Judge.* [SEAL.]

The clerk of said court will file this bill of exceptions as of the date of July 10th, A. D. 1890.

R. BUNN, *Judge.*

To William H. Bradley, Esq., clerk.

491 Upon the presentation of the bill of exceptions to the judge for settlement, on February 21st, 1891, counsel for plaintiff (defendant in error) moved that the judge do not sign the same, because the defendant (plaintiff in error) has waived her right thereto, since said defendant has not filed this bill of exceptions within the time prescribed by the judge at the time the appeal was prayed and has failed to have said case docketed in the supreme court, as in and by a stipulation entered into on October 8th, 1890, between the attorneys of the respective parties prescribed.

Which motion was denied by the judge.

To which ruling counsel for plaintiff then and there duly excepted.

Date, Madison, Feb'y 21, 1891.

R. BUNN, *Judge.*

(Endorsed:) Filed July 10, 1890. Wm. H. Bradley, cl'k.

492 Afterward, to wit, on the sixteenth day of July, 1890, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Know all men by these presents that we, Josephine P. Waldron, as principal, and James H. Campbell, as surety, both of the city of Chicago, county of Cook and State of Illinois, are held and firmly bound unto Mary A. Waldron, of the city of La Fayette, county of Tippecanoe and State of Indiana, in the full and just sum of twenty-five thousand dollars ($25,000), to be paid to the said Mary A. Waldron, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixteenth (16th) day of July, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in the northern division thereof, in a suit depending in said court between said Mary A. Waldron, plaintiff, and said Josephine P. Waldron, defendant, a judgment was rendered against the said Josephine P. Waldron, defendant, for the sum of seventeen thousand five hundred dollars ($17,500.00), and also for the costs of said suit, and the said Josephine P. Waldron, defendant, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mary A. Waldron, plaintiff, citing and admonishing her to be and appear
493 at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Josephine P. Waldron, defendant, shall prosecute said writ of error to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

JOSEPHINE P. WALDRON. [SEAL.]
JAMES H. CAMPBELL. [SEAL.]

Sealed and delivered in presence of—
F. A. ROOT.
WM. B. WIRT.

STATE OF ILLINOIS, } ss:
County of Cook, }

James H. Campbell, being first duly sworn, on his oath says that he is the same person whose signature is affixed to the within bond as the surety thereon; that he is a resident of the city of Chicago, in the county of Cook and State of Illinois, and is of lawful age; that he is worth financially over and above all his just debts and liabilities of every description at least the sum of fifty thou-
494 sand dollars ($50,000), and that he is the owner of real estate in the county of Cook and State of Illinois, the title of which is in his own name, of the value of at least one hundred thousand dollars ($100,000.00) over and above any and all liens or encumbrances thereon, and that the title to said real estate is good, as he is advised by his attorney who has examined the said title for him,

and that he is not liable on any appeal bonds other than the within; and further says not.

JAMES H. CAMPBELL.

Subscribed and sworn to before me this 16th day of July, A. D. 1890.

F. A. ROOT,
Notary Public. [SEAL.]

Approved by—
H. W. BLODGETT, *Judge.*

(Endorsed:) Filed July 16, 1890. Wm. H. Bradley, clerk.

495 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Mary Waldron is plaintiff and Josephine P. Waldron is defendant as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois. 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this twenty-fifth day of February, 1891.

WM. H. BRADLEY, *Clerk.*

496 UNITED STATES OF AMERICA, ss:

In the Supreme Court of the United States, October Term, A. D. 1891.

JOSEPHINE P. WALDRON, Plaintiff in Error,
vs.
MARY A. WALDRON, Defendant in Error.

Error to the circuit court of the United States for the northern district of Illinois.

Assignment of Errors.

And now comes the plaintiff in error, by Charles B. McCoy, her attorney, and prays this court to reverse, annul, set aside, and hold for naught the judgment of the said circuit court below, for the reason that there is in the said record and judgment manifest error; that the said circuit court, among other things, erred in the following, viz:

First. The circuit court erred in permitting said action to be maintained.

(*a.*) It appearing by the record that said action was brought by

the plaintiff below as the former wife of one Edward H. Waldron against the defendant below (the present wife of said Edward H. Waldron) for alienating the affections of said Edward H. Waldron, said action is not maintainable either at the common law or by statute. As affecting this question—

1. The circuit court erred in overruling the motion in arrest of judgment and in the other rulings hereinafter set forth.

497 (*b.*) It further appearing by the record that prior to commencing said suit the plaintiff below had voluntarily procured a divorce from said Edward H. Waldron on her own application, she thereby voluntarily barred herself from all legal right to his affections and to maintain this action for the alienation thereof. As affecting this question—

2. The circuit court erred in sustaining the demurrer to the first plea of the defendant below.

3. The circuit court erred in refusing to allow the defendant below to amend said plea.

4. The circuit court erred in refusing to instruct the jury, as requested, that their verdict must be for the defendant below.

5. The circuit court erred in overruling the motion in arrest of judgment.

Second. The circuit court erred in permitting counsel for the plaintiff below in his opening statement of the case to the jury to read to the jury and comment thereon, as being conclusive on the defendant below by reason of the decree in that cause, the parts of the record of the proceedings of said plaintiff below against said Edward H. Waldron for divorce containing charges against the defendant below, substantially to the same effect as those in the declaration in this cause.

Third. The circuit court erred in admitting on the trial improper evidence on the part of the plaintiff below over the objections of the attorneys for the defendant below—that is to say:

(*a.*) The evidence of the plaintiff's witness, Henry Kirtland, as to the disposition by the defendant of the property and effects of her deceased husband, E. S. Alexander.

(*b.*) The evidence of the plaintiff's witness, Marius Kasperson, to the same effect and of conversations of the defendant on that subject.

498 (*c.*) The evidence of the plaintiff of the inducements, threats, or coercion of her husband, Edward H. Waldron, as influencing or compelling her action in procuring the divorce in La Fayette, Indiana, in June, 1887.

(*d.*) The evidence of the plaintiff's witness, Willard W. Waldron, to the same effect and of the agency of one Robert Davie for said Edward H. Waldron, as well as of the acts of said Edward H. Waldron, in procuring the divorce or in assisting in or compelling its procurement.

(*e.*) The evidence of the plaintiff's witness, William C. Wilson, on the same subject and of the reluctance of the plaintiff to procure said divorce, and of the agreement of said Robert Davie, as agent, and of A. Orth Behm, as attorney, of Edward H. Waldron in the

divorce proceeding, to furnish the evidence on which to grant said divorce, and as to who were the witnesses in that suit, and as to the payments of money by Edward H. Waldron in connection with the procurement of said divorce.

(*f.*) The evidence of the plaintiff's witness, A. Orth Behm, on all these subjects and as to the agency of said Robert Davie for said Edward H. Waldron.

(*g.*) The testimony of the plaintiff's witness, John M. Larue, as to who were the witnesses in said divorce proceeding.

(*h.*) The deposition of John C. Brockenbrough as to the amount of money sent by said Edward H. Waldron to said Robert Davie about the time of the divorce proceeding.

(*i.*) The certified transcript of the record of said divorce proceeding, particularly the part thereof containing charges against the defendant below.

(*j.*) The statutes of Indiana as to how and for what causes divorces could be procured in that State.

(*k.*) The testimony of the plaintiff below as to transactions and the purport of conversations occurring in the absence of the
499 defendant, particularly on the occasion of the interview with Edward H. Waldron at the Beaurivage flats and as to what occurred and the state of their relations at the time Edward H. Waldron left La Fayette in June, 1886.

(*l.*) The testimony of plaintiff below and other witnesses as to the contents of letters and telegrams without producing the same or laying a proper foundation therefor.

(*m.*) Parts of the depositions of William C. Wilson, A. Orth Behm, and John M. Larue after said depositions had been suppressed by order of the court.

(*n.*) In admitting testimony as to the pecuniary condition of the plaintiff below, particularly her own testimony as to her poverty.

(*o.*) In admitting proof as to the financial condition of the defendant below and her alleged wealth.

(*p.*) In admitting other improper evidence upon the part of the plaintiff below.

Fourth. The circuit court erred in refusing to admit proper evidence offered by the defendant—that is to say:

(*a.*) The circuit court erred in refusing to allow the defendant, upon the cross-examination of the plaintiff below, to prove the conversations between herself and her said husband, Edward H. Waldron, and her admissions relative to a permanent separation and the procurement of a divorce.

(*b.*) The circuit court erred in refusing to permit the defendant, upon the cross-examination of the plaintiff below, to prove the admissions and statements made to her by her said husband, Edward H. Waldron.

(*c.*) The circuit court erred in refusing to permit the defendant, upon the cross-examination of the plaintiff below, to prove
500 the accusations and charges made against her by her said husband, Edward H. Waldron, in conversations had between them prior to the divorce.

(*d.*) The circuit court erred in refusing to allow the defendant to prove by the plaintiff below, on her cross-examination, the explanation made by her relative to matters connected with her divorce from her first husband, Beauchamp.

(*e.*) The circuit court erred in refusing to permit proper cross-examination of the plaintiff below on other matters material to the issues.

(*f.*) The circuit court erred in refusing to permit Edward H. Waldron, when called as a witness for the defendant, to testify as to his statements and declarations to the plaintiff below, as to his intentions of a permanent separation and loss of affection for her prior to the alleged acts of the defendant, and as to other matters.

(*g.*) The circuit court erred in refusing to permit Edward H. Waldron, when called as a witness for the defendant, to testify to the statements, declarations, and admissions of the plaintiff below on matters material to the issue.

(*h.*) The circuit court erred in refusing to permit proper examination of said Edward H. Waldron, when called as a witness for defendant, on other matters material to the issues.

(*i.*) The circuit court erred in refusing to admit other proper evidence offered by the defendant below.

Fifth. The circuit court erred in permitting the plaintiff below, in her direct examination, to testify in her own behalf as to occurrences and transactions and give her own interpretation or version of the subject-matter or substance and meaning of conversations between herself and her said husband, Edward H. Waldron, over the objection of defendant, and then in refusing to permit
501 defendant to cross-examine her as to the actual language used, then in afterwards permitting partial cross-examination as to the transactions and the subject of the conversations, but refusing to permit cross-examination as to the conversations themselves, and afterwards, over the objection of defendant, in striking out part of such direct and cross examinations without specifying distinctly or pointing out to the jury exactly what parts were so stricken out.

Sixth. The circuit court erred in permitting improper arguments to the jury by both counsel for the plaintiff below in their summing up of the case at the conclusion of the evidence over the objection of the defendant—

(*a.*) In commenting to the jury on the record of the divorce proceeding at La Fayette, Indiana, the statutes of Indiana as to divorce, the testimony as to what witnesses were called in said divorce case, and the testimony as to what grounds for divorce could not have been proven, and arguing to the jury that said divorce must have been granted on the grounds of improper conduct of the defendant below with said Edward H. Waldron, and that the said record was conclusive on that point.

(*b.*) In arguing to the jury that the said witness, Robert Davie, procured the information to which he testified in said divorce proceeding from said Edward H. Waldron after the court had excluded the evidence of Robert Davie on that subject.

(*d.*) In permitting other improper statements to the jury by both counsel for the plaintiff below.

Seventh. The circuit court erred in refusing to instruct the jury as requested by the defendant below.

Eighth. The circuit court erred in saying to the jury that the record of said divorce proceeding was conclusive.

Ninth. The circuit court erred in construing the statute
502 of Illinois on the right of husband and wife to testify for or against each other in this action.

Tenth. The circuit court erred in charging the jury as follows, to wit:

"We know, as a matter of common knowledge and observation, that, as a general rule, men woo and women are wooed and won; that men seduce and allure and lead women from the path of virtue, and that women are allured, seduced, and led astray; but we also know, from common observation, that this general rule does not always hold, and that sometimes women woo men; that sometimes women allure, seduce, and debauch men; that women, upon occasions, induce, allure, and persuade men to abandon and desert their wives and form new relations, lawful or unlawful. It will be for the jury to say, from all the evidence, what were the facts in this cause and whether the issue stand- proved or unproved."

Eleventh. The circuit court erred in its charge to the jury, on the measure of the damages of plaintiff below, as follows, to wit:

"The ground of damages will be mainly the injury to the plaintiff's feelings, the loss of her husband's support, his affections, his aid, society, and companionship caused by the wrongful acts of the defendant, and should be fairly and dispassionately assessed according to the nature and extent of the injury so sustained by the plaintiff from a full and careful consideration of all the evidence and circumstances in the case, including, of course, the evidence given you of the pecuniary circumstances of the defendant, and, in addition, damages compensatory in character. If the jury believe that the injury was inflicted wantonly and maliciously, they may, in their descretion, add thereto such sum as they may think just and proper as exemplary or punatory damages as a punishment to the defendant."

503 Twelfth. The verdict of the jury was excessive.

Thirteenth. The verdict of the jury was contrary to the law.

Fourteenth. The verdict of the jury was contrary to the evidence.

Fifteenth. The circuit court erred in overruling the motion of defendant below to set aside the verdict and grant a new trial.

Sixteenth. The circuit court erred in overruling the motion of defendant below in arrest of judgment and awarding judgment on the verdict.

CHARLES B. McCOY,
Attorney for Plaintiff in Error.

504. UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between Mary A. Waldron, plaintiff, and Josephine P. Waldron, defendant, in an action of trespass on the case, a manifest error hath happened, to the great damage of the said Josephine P. Waldron, defendant, as by her complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1890, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fifteenth day of July, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the 115th year.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

WM. H. BRADLEY,
Clerk U. S. Circuit Court, Nor. Dist. Ill.

[Endorsed:] Supreme Court of the United States. Josephine P. Waldron, plaintiff in error, *vs.* Mary A. Waldron, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

505 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Mary A. Waldron, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday of October, A. D. 1890, pursuant to a writ of error (and a true copy thereof for you) filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Josephine P. Waldron is the plaintiff in error and you, the said Mary A. Waldon, are the defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, dist. judge, holding said cir. court, this sixteenth (16th) day of July, in the year of our Lord one thousand eight hundred and ninety.

H. W. BLODGETT, *Judge.*

506 [Endorsed:] Supreme Court of the United States. Josephine P. Waldron, plaintiff in error, *vs.* Mary A. Waldon, defendant in error. Citation to October term, A. D. 1890.

STATE OF INDIANA, }
County of Tippecanoe, } *ss:*

Mark M. McKee, being first duly sworn, on his oath says that he is of lawful age and is a resident of La Fayette, in the county of Tippecanoe and State of Indiana; that he is acquainted with Mary A. Waldron, the within-named defendant in error, and has known her for many years; that he served the within citation on the within-named Mary A. Waldron, defendant in error, by reading the same to her and by delivering to her a true copy thereof on the 18th day of July, A. D. 1890; and further says not.

MARK M. McKEE.

Subscribed and sworn to before me this 18 day of July, A. D 1890.

{ Seal William C. Mitchell, Notary Public, La Fayette, Tippecanoe Co., Indiana. }

WILLIAM C. MITCHELL,
Notary Public, Tippecanoe Co., Ind.

Endorsed on cover: Case No. 14,504. N. Illinois C. C. U. S. No. 398. Josephine P. Waldron, plaintiff in error, *vs.* Mary A. Waldron. Filed February 28th, 1891.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

JOSEPHINE P. WALDRON,
PLAINTIFF IN ERROR,
v.
MARY A. WALDRON.

No. 665.

In error to the Circuit Court of the United States for the Northern District of Illinois.

Motion to Vacate Supersedeas.

Now comes Mary A. Waldron, by Charles H. Aldrich, her attorney, and respectfully represents to the Court that on the 10th day of July, 1890, she recovered a judgment in the court below against the plaintiff in error, Josephine P. Waldron, for the sum of $17,500, together with costs in her said action; that thereafter, on the 15th day of July, 1890, the said Josephine P. Waldron sued out a writ of error in said cause and obtained a supersedeas against said judgment, tendering as security therefor one James H. Camp-

APPENDIX.

TRANSCRIPT OF PROCEEDINGS.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
Cook County, }

Pleas before the Honorable Richard W. Clifford, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the eighteenth day) of April, in the year of our Lord one thousand eight hundred and ninety-two, and of the independence of the United States the one hundred and sixteenth.

Present, Hon. Richard W. Clifford, one of the judges of the circuit court of Cook county, State of Illinois.

J. M. LONGENECKER,
State's Attorney.
JAS. H. GILBERT,
Sheriff.

Attest: HENRY BEST,
Clerk.

Be it remembered that at the term aforesaid, to wit, on the 20th day of April, A. D. 1892, the following, among other, proceedings were had and entered of record in said court, to wit:

WILLIAM W. BELL
v.
JAMES H. CAMPBELL. } 102,121. *Assumpsit.*

And now, on this day, comes the plaintiff to this suit, by his attorney, and it appearing to the court that due per-

sonal service of process of summons issued in said cause has been had on the defendant for at least ten days before the first day of this term and he, being now here three times solemnly called in open court, comes not, nor does any person for him, but herein he makes default, which is, on motion of plaintiff, ordered to be taken, and the same is hereby entered herein of record, wherefore the plaintiff ought to have and recover of and from the defendant damages sustained herein by reason of the premises, and thereupon reference is had to the court to assess the plaintiff's damages herein, and the court now here, after hearing the allegations and proofs submitted herein by the plaintiff, and being fully advised in the premises, assesses said plaintiff's damages against the defendant to the sum of ten thousand six hundred and twenty-one dollars and 12 cents.

Therefore it is considered by the court that the plaintiff do have and recover of and from the said defendant said damages of ten thousand six hundred and twenty-one dollars and 12 cents in form as aforesaid by the court assessed, together with his costs and charges in this behalf expended, and have execution therefor.

UNITED STATES OF AMERICA,
State of Illinois, } ss:
Cook County,

I, Henry Best, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain judgment order made and entered of record on the 20th day of April, A. D. 1892, in a certain cause lately pending in said court, on the common law side thereof, between William W. Bell, plaintiff, and James H. Campbell, defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in the said county, this 29th day of October, A. D. 1892.

[SEAL.]

HENRY BEST,
Clerk.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Murray F. Tuley, chief justice of the circuit court of Cook county, in the State of Illinois, hereby certify that Henry Best, who signed the above certificate, was at the time of signing the same and is now clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal, at Chicago, in said county of Cook, this 29th day of October, A. D. 1892.

M. F. TULEY, [SEAL.]
Chief Justice of the Circuit Court of Cook County.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry Best, clerk of the circuit court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the honorable M. F. Tuley, whose name is subscribed to the annexed and foregoing was at the time of the signing thereof and now is chief justice of said circuit court, duly elected, commissioned, and qualified, and that his said signature is genuine.

In witness whereof I have signed my name and affixed the seal of said circuit court, at my office, in the city of Chicago, in said Cook county, this 29th day of October, 1892.

[SEAL.] HENRY BEST,
Clerk.

FI. FA. FOR PLAINTIFF'S DAMAGES.

STATE OF ILLINOIS, } ss:
Cook County, }

The people of the State of Illinois to the sheriff of said county, greeting:

We command you, that of the lands and tenements,

goods and chattels of James H. Campbell, defendant, in your county, you cause to be made the sum of ten thousand six hundred and twenty-one dollars and 12 cents, which William W. Bell, plaintiff, lately in the circuit court of Cook county, at a term thereof begun and held at Chicago, in said Cook county, on the third Monday of April, A. D. 1892, recovered against the said defendant, and which, by the said court, was adjudged to the said plaintiff for his damages; and also the further sum of seven dollars and — cents, which was adjudged to the said plaintiff for his costs and charges in that behalf expended, wherefore the said defendant is convicted, as appears to us of record.

And have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make due return of this writ, with an endorsement hereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness Henry Best, clerk of our said court, and the seal thereof, at the city of Chicago, in said county, the 20th day of April, A. D. 1892.

[SEAL.] HENRY BEST,
Clerk.

[Endorsed:]

Circuit Court of Cook county. Execution No. 38,438, case No. 10,212. Fee-book 52, page 143. Date April 20, 1892. W W. Bell *vs.* J. H. Campbel.

Damages	$10,621 12
Plaintiff's costs	7 00
Defendant's costs	
	$10,628 12

Filed June 23, 1892. Henry Best, clerk. The sheriff will collect interest from April 20, 1892, and pay plaintiff's costs to plaintiff's attorneys. Henry Best, clerk. H. W. Wolseley, att'y.

Pd. 75.

M. 50.

I have demanded of the within-named James H. Campbell that he pay this execution, which he refused and failed to do. I therefore return this execution no property found

in my county subject to levy and no part satisfied this 21st day of June, 1892.

JAMES H. GILBERT,
Sheriff,
By F. LEIBRANDT,
Deputy.

COPY. BILL OF COSTS.

CIRCUIT COURT OF COOK COUNTY.

Of the —— Term, A. D. 189—.

W. W. BELL
v.
J. H. CAMPBELL. } No. 102,121.

Clerk's cost, paid by plff. attorney.....$6 00
Sheriff's fees, paid by —— attorney..... 1 00

$7 00

I, Henry Best, clerk of the circuit court of Cook county, State of Illinois, do hereby certify that the above is a true copy of plffs.' cost from my fee-book in the above-entitled cause.

HENRY BEST,
Clerk.

UNITED STATES OF AMERICA,
State of Illinois,
Cook County, } *ss:*

I, Henry Best, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain writ of execution issued out of said court on the 20th day of April, A. D. 1892, with the return of the sheriff thereon endorsed, in a certain cause lately pending in said court, on the common law side thereof, between William W. Bell, plaintiff, and James H. Campbell, defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 29th day of October, A. D. 1892.

[SEAL.] HENRY BEST,
Clerk.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Murray F. Tuley, chief justice of the circuit court of Cook county, in the State of Illinois, hereby certify that Henry Best, who signed the above certificate, was at the time of signing the same and is now clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal, at Chicago, in said county of Cook, this 29th day of October, A. D. 1892.

M. F. TULEY, [SEAL.]
Chief Justice of the Circuit Court of Cook County.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry Best, clerk of the circuit court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the honorable M. F. Tuley, whose name is subscribed to the annexed and foregoing certificate, was at the time of signing thereof and now is chief justice of said circuit court, duly elected, commissioned, and qualified, and that his said signature is genuine.

In witness whereof I have signed my name and affixed the seal of said circuit court, at my office, in the city of Chicago, in said Cook county, this 29th day of October, 1892.

[SEAL.] HENRY BEST,
Clerk.

STATE OF ILLINOIS, } ss: *In the Circuit Court thereof.*
County of Cook, }

To the honorable the judges of said court, in chancery sitting:

Your orator, William W. Bell, brings this bill of complaint against James H. Campbell (who will hereinafter be designated as principal defendant) and George W. Henry, Robert L. Henry, J. H. McFarland, G. B. Campbell, R. P. Shields, the James H. Campbell Company, the Campbell Commission Company, the Drovers' National Bank, the Columbia National Bank, and the Chicago Trust and Savings Bank (who will be hereinafter designated as co-defendants), and thereupon your orator complains and says:

That on the 20th day of April, in the year 1892, your orator recovered a judgment at law in said court against said principal defendant for the sum of ten thousand six hundred and twenty-one dollars and twelve cents, which judgment was so recovered upon an indebtedness contracted by said defendant on or about the — day of ——, in the year 1891; that execution upon said judgment against the property of said defendant was thereafter duly issued and delivered to the sheriff of said Cook county, where said defendant at that time resided, and the same was thereafter by said sheriff returned wholly unsatisfied, he certifying that he could find no property whereon to levy to make any part of the amount thereof, as by the record of said judgment and execution and return thereon, filed in this court, will more fully appear.

That said judgment remains in full force and unsatisfied, and the amount aforesaid, with interest, is now equitably due thereon, over and above all offsets and claims.

That this bill is not exhibited in collusion with said defendant, or with any other person, or for the purpose of protecting said defendant's property from other creditors, but for the sole purpose of compelling the payment of said judgment.

That the aforesaid return of the sheriff upon said execution was not procured by the fraud or connivance of your orator, but was made by the said sheriff solely for the reason

that he was unable to find property of the defendant in said county out of which, by levy and sale, he could realize any part of the amount of said writ.

Your orator, however, is informed and believes, and so charges the fact to be, that the said principal defendant has real estate, or some interest therein, and has moneys in hand or deposited or held for his credit or use, stocks, bonds, promissory notes, debts due him, mortgages or other securities, life-insurance policies, horses, carriages or other vehicles and their equipment, watches, diamonds, jewelry, or personal ornaments, silverware, pictures, furniture, fixtures and other property, equitable interests and things in action belonging to him, and which he keeps concealed or of which the title is held by others in trust for him, and which your orator has been unable to reach by execution.

And your orator further charges that since the debt upon which the said judgment was entered as aforesaid was contracted the said principal defendant has put out of his hands, name or possession, by some pretended sale, assignment, conveyance, gift, confidence, bailment, or delivery, or by some other secret or cunning device or contrivance, divers other such real estate and personal property, with intent to deceive, hinder, delay, and defraud your orator of his aforesaid judgment, and other creditors of their just demands; all of which property is held in secret trust by the person or persons to whom the same has been so transferred with the private understanding or agreement that the same or some interest therein belongs of right and shall inure to the benefit of said defendant.

And your orator further charges that the said principal defendant is in equity the owner of, or of some interest, in the following-described real estate, the legal title to which is held by the co-defendants hereinafter named, or some of them, in trust for the use and benefit of said principal defendant, viz:

a. Blocks Nos. 35, 38, and 43, in the school trustees' subdivision in section 16, township 37 north, range 14 east of the third principal meridian, in Cook county, Illinois.

b. Blocks Nos. 23 to 35, inclusive, in block 1; and lots Nos. 36, 37, 38, 39, and 4, in block 1; and lots Nos. 13

and 14, in block 16; and lots Nos. 20, 21, 22, 23, 24, in block 18; and lots Nos. 25, 26, 27, 28, 29, 30, in block 19; and lots 34 and 35, in block 22; and lots 21, 22, 23, 24, in block 24, all in James H. Campbell's addition to Chicago, being a subdivision of the northwest quarter (except the east 50 feet thereof) of section 14, township 38 north, range 13 east of the third principal meridian, in Cook county, Illinois.

c. Blocks 13, 20, and 21 in James H. Campbell's addition to Chicago, being a subdivision as aforesaid.

d. Block 28 in James H. Campbell's addition to Chicago, being a subdivision as aforesaid.

e. Lots Nos. 2, 3, 6, 7, 10, 11, 14, and 15, in block 1, and lots 2 and 3 in block 6, in Stone's subdivision, in section 34, township 19 north, range 14 east of the third principal meridian, in Cook county, Illinois.

f. That part of the west half of the southwest quarter of section 4, township 38 north, range 13, lying south and east of the right of way of the Chicago & Alton railroad; and the west half of the west half of section 9, township 38 north, range 13 east of the third principal meridian, all in Cook county aforesaid.

g. Lots 36 and 37 in block 32, in James H. Campbell's addition to Chicago, being a subdivision as aforesaid.

h. Lot 6, in block 7, in Chiddester's Seventy-fourth street addition to Eggleston, a subdivision of the west half of the west half of the south half of the south half of the northeast quarter of section 28, township 38 north, range 14 east of the third principal meridian, in Cook county, Illinois.

i. The north thirty acres of the west half of the southeast quarter of section 15, township 38 north, range 13 east of the third principal meridian, in Cook county, Illinois.

j. The northeast quarter of the west half of the west half of the southeast quarter of section 15, township 38 north, range 13 east of the third principal meridian, in Cook county, Illinois.

And your orator further charges that the real estate hereinbefore described stands upon the records of said county

in the names of the co-defendants George W. Henry, Robert L. Henry, J. H. McFarland, G. B. Campbell, and R. P. Shields, or some of them, to whom the same has been conveyed for the fraudulent purpose of hindering and delaying the creditors of the principal defendant, or who hold the same or some interest therein in trust for the use and benefit of said principal defendant.

And your orator further charges that among other persons to whom fraudulent transfers have been so made by said principal defendant are the co-defendants The James H. Campbell Company, an Illinois corporation; The Campbell Commission Company, an Illinois corporation; The Chicago Trust & Savings Bank, an Illinois corporation; The Drovers' National Bank, a corporation organized under the general banking laws of the United States, and The Columbia National Bank, a corporation also organized under the general banking laws of the United States, which said parties or some of them have property in their name or control, subject to some lien, but in which said principal defendant has some equity of redemption or other valuable interest, or that said co-defendants or some of them are indebted to said principal defendant, and that all the property held by said principal defendant, or conveyed, transferred, or disposed of as aforesaid, the nature, whereabouts, and condition of which is unknown to your orator, ought in equity and good conscience to be applied to the satisfaction of said judgment, but the several defendants neglect and refuse to so apply the same, and that so it would appear if the several defendants would set forth and discover fully and particularly all the facts, circumstances, agreements, confidences, and private trusts and understandings in regard to the same, which your orator prays the court to compel said several defendants to do.

To the end, therefore, that the said several defendants may, if they can, show why your orator should not have the relief hereby prayed, and may each be required to answer the foregoing bill fully and particularly, but not under oath, answers under oath being hereby waived, and that the said principal defendant may be decreed to pay and satisfy the amount due on said judgment and the costs of this suit, and

to apply to that purpose the property aforesaid, and that a receiver may be appointed with the usual powers, and that the principal defendant may be enjoined from transferring or otherwise disposing of his property or effects and any property or effects held in trust for him, except when such trust has in good faith been created by or the fund so held in trust proceeded from some person other than the principal defendant himself, and that all fraudulent transfers of said co-defendants may be set aside and their real interests, if any, in the property or estate of the principal defendant may be ascertained and determined, and that your orator may have such further and other relief as the nature of his case may require—

May it please your honor to grant unto your orator the writ of summons in chancery, directed to the sheriff of Cook county, commanding that he summon the defendants, James H. Campbell, George W. Henry, Robert L. Henry, J. H. McFarlane, G. B. Campbell, R. P. Shields, The James H. Campbell Company, The Campbell Commission Company, The Drovers' National Bank, The Columbia National Bank, and the Chicago Trust & Savings Bank, and each of them, to be and appear in this court upon the first day of the next term thereof, to answer the premises and abide by and perform such decree as may be passed therein.

And may it further please your honors to grant unto your orator the writ of injunction enjoining and restraining the principal defendant in the manner hereinabove set forth.

WM. W. BELL,
By his solicitor, W. D. WASHBURN.

ALDRICH, PAYNE & DEFREES,
Of Counsel.

UNITED STATES OF AMERICA,
State of Illinois,
Cook County, } *ss:*

I, Henry Best, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify the above and fore-

going to be a true, perfect, and complete copy of a certain bill of complaint filed in said court on the 22d day of June, A. D. 1892, in a certain cause pending in said court, on the chancery side thereof, between Wm. W. Bell, complainant, and James H. Campbell *et al.*, defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 29th day of October, A. D. 1892.

[SEAL.] HENRY BEST,
Clerk.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, M. F. Tuley, chief justice of the circuit court of Cook county in the State of Illinois, hereby certify that Henry Best, who signed the above certificate, was at the time of signing the same and is now clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal, at Chicago, in said county of Cook, this 29th day of October, A. D. 1892.

M. F. TULEY, [SEAL.]
Chief Justice of the Circuit Court of Cook County.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry Best, clerk of the circuit court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the honorable M. F. Tuley, whose name is subscribed to the annexed and foregoing certificate, was at the time of the signing thereof and now is chief justice of said circuit court, duly elected, commissioned, and qualified, and that his said signature is genuine.

In witness whereof I have signed my name and affixed

the seal of said circuit court, at my office, in the city of Chicago, in said Cook county, this 29th day of October, 1892.

[SEAL.] HENRY BEST,
Clerk.

STATE OF ILLINOIS, } ss:
County of Cook, }

IN THE CIRCUIT COURT OF COOK COUNTY.

WILLIAM W. BELL
v.
JAMES H. CAMPBELL, GEORGE W. HENRY, JAS. H. MCFARLAND, G. B. CAMPBELL, THE JAMES H. CAMPBELL COMPANY, CAMPBELL COMMISSION COMPANY, impleaded with others. } *In Chancery.*

The Answer of James H. Campbell, one of the Defendants, to the Bill of Complaint of William W. Bell, Complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto or to so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, says:

This defendant admits that on the 20th day of April, A. D. 1892, complainant recovered a judgment at law in the circuit court of said county against this defendant for the sum of $10,621.12. And this defendant further says that he is not informed, save by the complainant's said bill, whether execution upon said judgment was thereafter duly issued and delivered to the sheriff of said Cook county, where said defendant at that time resided, and whether the same was thereafter by said sheriff returned wholly unsatisfied.

This defendant, further answering, admits that the said

judgment remains in full force and unsatisfied, and that the amount aforesaid, with interest, is now due thereon.

This defendant, further answering, denies that he has real estate or any interest therein, or has moneys in hand or deposited or held for his credit or use, or stocks, bonds, promissory notes, debts due him, mortgages or other securities, life insurance policies, horses, carriages or other vehicles and their equipment, watches, diamonds, jewelry or other personal ornaments, silverware, pictures, furniture, fixtures or other property, or equitable interest in things in action belonging to him and which he keeps concealed, or of which the title is held by others in trust for him.

And this defendant, further answering, denies that since the date upon which the said judgment so recovered as aforesaid was contracted he has put out of his hands, name, or possession, by any pretended sale, assignment, conveyance, gift, confidence, bailment or delivery, or by any other secret or cunning device or contrivement, divers or any other such real estate and personal property with intent to deceive, hinder, delay, or defraud complainant of his aforesaid judgment, or other creditors of their just demands, or that there is any property held in secret trust by any person for the benefit of this defendant with the private understanding or agreement that the same or some interest therein belongs of right and shall inure to the benefit of this defendant.

And this defendant, further answering, denies that he is the owner of any interest, equitable or otherwise, in blocks thirty-five (35), thirty-eight (38), and forty-three (43) in school trustees' subdivision in section sixteen (16), township thirty-seven (37) north, range fourteen (14) east of the third (3d) principal meridian of Cook county, Illinois.

And this defendant, further answering, denies that he is the owner of any interest, equitable or otherwise, of lots four (4) and twenty-three (23) to thirty-nine (39), inclusive, in block one (1); lots thirteen (13) and fourteen (14) in block sixteen (16); lots twenty (20) to twenty-four (24), inclusive, in block eighteen (18); lots twenty-five to thirty (30) in block nineteen (19); lots thirty-four and thirty-five (35) in block twenty two (22); lots twenty-one (21) to twenty-four (24) in block twenty-four (24), in James H. Campbell's addition to

Chicago, being a subdivision to the northwest quarter (¼) (except the east fifty (50) feet thereof) of section fourteen (14), township thirty-eight (38) north, range thirteen (13) east of the third (3d) principal meridian, nor has this defendant any interest in any part of said property; but he says that he conveyed all of his interest in said described property, long before judgment was recovered herein, for full and fair consideration.

Further answering, this defendant says that he has no interests of an equitable nature or otherwise in blocks thirteen (13), twenty (20), twenty-one (21), and twenty-eight (28) in said James H. Campbell's addition, nor in any part thereof; but that he conveyed all his interest in the same, long before the rendition of said judgment, for a full and fair consideration.

And this defendant, further answering, says that he has no interests, equitable or otherwise, in lots two (2), three (3), six (6), seven (7), ten (10), eleven (11), fourteen (14), and fifteen (15) in block one (1), and lots two (2) and three (3) in block six (6), in Stone's subdivision, in section thirty-four (34), township nineteen (19) north, range fourteen (14) east of the third (3d) principal meridian, nor in any part thereof; but that he conveyed all his interest in the same, long before the rendition of said judgment, for full and fair consideration.

And this defendant, further answering, says that he has no interest of any nature whatsoever in the west one-half (W. ½) of the southwest quarter (SW. ¼) of section four (4), township thirty-eight (38) north, range thirteen, lying south and east of right of way of the Chicago and Alton Railroad, or the west one-half (W. ½) of the west one-half (W. ½) section nine (9), township thirty-eight (38) north, range thirteen (13) east of the third principal meridian; but that he conveyed all interest that he ever had therein for full and fair consideration long before the rendition of said judgment of complainant.

And this defendant, further answering, says that he has no interests, equitable or otherwise, in lots thirty-six and thirty-seven (37) in block thirty-two (32) in said James H. Campbell's addition, or in lot six (6) in block seven (7) in

Chichester's Seventy-fourth-street addition, to Eggleston mentioned in said bill, but that he conveyed all interest he ever had in such property or any part thereof for full and fair consideration long before the rendition of complainant's said judgment.

And this defendant, further answering, says that he has no interests, equitable or otherwise, in the west one-half (W. ½) of the southeast quarter (SE. ¼) of section fifteen (15), township thirty-eight (38) north, range thirteen (13) east of the third (3d) principal meridian, mentioned in said bill, or in any part thereof; but that he conveyed all his interest [in] the same, long before the rendition of said judgment of complainant, for full and fair consideration.

And this defendant, further answering, denies that he conveyed the said real estate or any part thereof to his said co-defendants herein or to any one of them, or to any one, for the fraudulent purpose of hindering and delaying his creditors, and he denies that they or any of them hold said premises or any part thereof in trust for his use and benefit.

And this defendant, further answering, denies that he has ever at any time made fraudulent transfers of any property belonging to him to his co-defendants The James H. Campbell Company, The Campbell Commission Company, The Chicago Trust and Savings Bank, The Drovers' National Bank, and The Columbia National Bank, or any of them.

And this defendant denies that the complainant is entitled to the relief or any part thereof prayed by him in his said bill of complaint.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and prays to be hence dismissed with his rea-

sonable costs and charges in this behalf most wrongfully sustained.

(Signed) JAMES H. CAMPBELL.

KEEP & LOWDEN,
Solrs. and of Counsel for said Deft.

UNITED STATES OF AMERICA,
State of Illinois,
Cook County, } ss:

I, Henry Best, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify that I am the keeper of the records and files of said court, and that the above and foregoing is a true, perfect, and complete copy of a certain answer filed in said court on the 4th day of August, A. D. 1892, in a certain cause pending in said court, on the chancery side thereof, between William W. Bell, complainant, and James H. Campbell *et al.*, defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 29th day of October, A. D. 1892.

[SEAL.] HENRY BEST,
Clerk.

STATE OF ILLINOIS,
County of Cook, } ss:

I, M. F. Tuley, chief justice of the circuit court of Cook county, in the State of Illinois, hereby certify that Henry Best, who signed the above certificate, was at the time of signing the same and is now clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal, at Chicago, in said county of Cook, this 29th day of October, A. D. 1892.

M. F. TULEY, [SEAL.]
Chief Justice of the Circuit Court of Cook County.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry Best, clerk of the circuit court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the honorable M. F. Tuley, whose name is subscribed to the annexed and foregoing certificate, was at the time of the signing thereof and now is chief justice of said circuit court, duly elected, commissioned, and qualified, and that his said signature is genuine.

In witness whereof I have signed my name and affixed the seal of said circuit court, at my office, in the city of Chicago, in said Cook county, this 29th day of October, 1892.

[SEAL.] HENRY BEST,
Clerk.

156

Office Supreme Court U. S.
FILED.
OCT 11 1894
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO. ~~388~~ 97 CAUSE NO. 14,504.

JOSEPHINE P. WALDRON,
Plaintiff in Error,
vs.
MARY A. WALDRON,
Defendant in Error.

Error to the Circuit Court of the United States, for the Northern District of Illinois.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

CHARLES H. ALDRICH,
COUNSEL FOR MARY A. WALDRON.

BARNARD & GUNTHORP, PRINTERS, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

TERM NO. 398. **CAUSE NO. 14,504.**

JOSEPHINE P. WALDRON,
Plaintiff in Error,
vs.
MARY A. WALDRON,
Defendant in Error.

Error to the Circuit Court of the United States, for the Northern District of Illinois.

REFERENCES ARE TO PAGES OF THE PRINTED RECORD.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

The defendant in error, in support of the motion heretofore made to affirm the judgment of the court below or dismiss the appeal herein, submits the following:

First. The record shows (Rec., 292), that the writ of error and citation were not made returnable within thirty days from the day of signing the citation as required by subdivision 5 of rule 8 of this court.

Second. The plaintiff in error failed to docket the case and file the record thereof with the clerk of this court by or before the return day as required by subdivision 1, of rule 9 of this court, nor was the time within which this should be done enlarged by the judge who signed the citation, nor by any justice of this court.

Third. The record shows that judgment was entered on the verdict in this case on July 10, 1890, and defendant given until November 1, 1890, to file her bill of exceptions. (Rec., 20, 21.) The bill of exceptions was not tendered to the judge until February 21, 1891, at which date he signed and sealed it as of the date of July 10, 1890. It is confidently submitted that the court had no jurisdiction to sign the bill at the time it was signed, and that its order to the clerk to enter the same as of the earlier date was wholly nugatory and void.

The court below therefore erred in signing said bill of exceptions over the objection and exception of the defendant in error. (Rec., 285.)

Fourth. There is no bill of exceptions in this case within the rules and practice of this court.

Fifth. The bill of exceptions does not purport to contain the evidence.

In discussing these propositions the facts pertaining thereto will be stated at somewhat greater length. These facts so far as the first and second propositions are concerned are apparent upon the face of the record. They also appear in the proceedings in this court, a motion having heretofore been made to dismiss the appeal under Rule 9, which, upon opposition being made, was postponed, the chief justice then announcing that the questions raised could be reserved to the hearing. It is therefore submitted that no notice to opposing counsel was necessary, and no right to insist upon these propositions has been waived. Indeed, as rules prescribed by the court for the conduct of its own business and the guidance of litigants it is thought that they are in no way subject to the control of counsel either by stipulation or conduct; and the court finding that there has been no writ of error taken out as prescribed by its own rules, and that no record has been filed or docketed as

also required, should fail to find before it any case requiring its consideration beyond ridding the docket of its presence.

The *third* objection requires a more extended statement.

As has been stated, the court allowed the plaintiff in error until November 1, 1890, to file her bill of exceptions. (Rec., 21.) On October 6, 1890, her counsel applied to the writer of this brief for an extension of such time, and after some negotiations a stipulation was entered into in the following words and figures:

"UNITED STATES OF AMERICA, } ss. Term. No. 525.
NORTHERN DISTRICT OF ILLINOIS. } Gen. No. 20,966.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR SAID DISTRICT.

Mary A. Waldron
vs. } *Case.* *Damages $100,000.*
Josephine P. Waldron.

Judgment on July 10, A. D. 1890, in favor of said plaintiff for $17,500.00 and costs of suit.

STIPULATION AS TO TRANSCRIPT OF RECORD FOR UNITED STATES SUPREME COURT.

WHEREAS, said defendant has sued out a writ of error from the Supreme court of the United States, to the said Circuit court, from the said judgment; and has also filed and approved in said cause a *supersedeas* bond in the penal sum of $25,000.00; and has caused a citation to be issued and served upon the above named plaintiff, returnable at the October term, A. D. 1890, of said Supreme court of the United States.

And whereas, counsel for the above named defendant, (plaintiff in error in said Supreme court) wish an extension of time to perfect and have approved the bill of exceptions in said cause; and thereafter, wish ample time to have the transcript of the record in said cause prepared and filed in the said Supreme court; which extension

counsel for the above named plaintiff (defendant in error in said Supreme court) are willing to grant, provided the said cause shall be docketed in the Supreme court of the United States as early, and in the same order as to priority, as it would be docketed, if the transcript of the record were filed in said Supreme court within the time regularly required by the rules of said court, so that the time when said cause shall be reached for hearing in said Supreme court shall not be postponed by such extension;

Now, therefore, it is hereby stipulated and agreed by and between the counsel for the above named parties:

First. That the above named defendant (as plaintiff in error) shall file in the office of the clerk of the Supreme court of the United States the said writ of error, the said citation and this stipulation, and shall have the said cause docketed in said Supreme Court in its regular order within the time regularly required by the rules of said court for the filing of the transcript of the record in said cause in said Supreme Court as if this stipulation had not been made.

Second. That counsel for the above named defendant shall have until November 15, A. D. 1890, to prepare the bill of exceptions in said cause and deliver it to counsel for the above named plaintiff for examination and such correction as he may deem proper.

Third. That counsel for the above named plaintiff shall examine said bill of exceptions and return it to counsel for the above named defendant within thirty days after it shall have been delivered to him with any proposed corre ions or alterations which he may deem proper.

Fourth. Thereafter, as soon as practicable, but within thirty days upon reasonable notice, said bill of exceptions shall be presented to the judge who conducted the trial of said cause for his approval after the settlement by him of any parts of said bill of exceptions as to which counsel may have been unable to agree.

Fifth. That said bill of exceptions shall be approved by said judge and be by him sent to the clerk of said Circuit court with directions that it be filed as of the date of the entry of said judgment.

Sixth. That within thirty days after said bill of exceptions shall have been so filed the transcript of said record

shall be completed and filed in the Supreme court of the United States in said cause as theretofore docketed.

That in the meantime so long as counsel for said above named defendant make no default in the performance of the conditions of this stipulation, counsel for the above named plaintiff (defendant in error) will make no motion to dismiss said writ of error for failure to file said transcript of the record within the time regularly prescribed by the rules of said Supreme Court, and the said transcript when so filed shall be taken and considered as having been filed in apt time.

This stipulation is executed in triplicate, one to be filed in the Supreme Court of the United States, and one to be retained by counsel for each of said parties.

Dated at Chicago, Illinois, October 6, A. D. 1890.

CHARLES H. ALDRICH,
Attorney for the above named plaintiff.
CHARLES B. MCCOY,
Attorney for the above named defendant.

This is before this court, as counsel for plaintiff in error filed it herein on the 27th day of October, 1890, and moved this court to docket the case, which motion was denied on November 3, 1890.

The conditions upon which the extension was granted failed; the plaintiff in error presented the bill of exceptions to the counsel for defendant in error January 15, 1891, sixty days later than he was required to do by the stipulation; he was notified as soon as this court refused to docket the case that this point would be insisted upon, and when the bill was tendered the question was distinctly reserved as certified by the judge. (Rec., 285.)

Assuming, for the purpose of argument only, that counsel were able by their mere stipulation and without an order of the court procured before the expiration of the time limited, to extend the jurisdiction of the court to settle the bill of exceptions, it is certain that they had power to prescribe the

terms of their own agreement. It was therefore competent to make the stipulation subject to the proviso that the "cause "shall be docketed in the Supreme court of the United States, "as early and in the same order as to priority, as it would be "docketed if the transcript of the record were filed in said Su- "preme Court, or within the time regularly required by the "rules of said court, so that the time when said cause shall be "reached for hearing in said Supreme Court shall not be post- "poned by such extension."

Then follows the first stipulation by which the plaintiff in error positively agreed to have "the cause docketed in said "Supreme Court in its regular order, within the time regularly "required by the rules of said court for the filing of the tran- "script of the record in said cause in said Supreme Court, as "if this stipulation had not been made."

The right to move for a dismissal of the writ of error was impliedly if not expressly recognized by the provision that such motion should not be made "so long as counsel for said "above-named defendant (plaintiff in error) make no default "in the performance of the conditions of this stipulation," etc.

This was entered into purely as a matter of accommodation to the plaintiff in error. It seems but simple justice, as well as in accordance with the plainest principles of interpretation, that, if the stipulation is allowed for any purpose, it should only be for *the* purpose and upon the terms therein provided. Under such an interpretation the risk of the delay is put wholly upon the person seeking the delay, while any other interpretation casts all the risk and loss upon the defendant in error.

Again the stipulation was not complied with by delivering the bill of exceptions to counsel for defendant in error until January 15, 1891. Upon what principle a consent to extend the time to November 15, 1890, can be said to be a consent to

extend to January 15, 1891, I am at a loss to understand. To assert the affirmative is equivalent to an assertion that the extension of fourteen days beyond the time given by the court was tantamount to a consent to an indefinite extension.

The distinction is to be kept in mind that the parties to this stipulation did not intend to agree that action one way or the other as to the docketing should be obtained from the Supreme Court. I made the docketing of the cause in that court, and I think it is expressed with sufficient clearness in the stipulation, a condition precedent to any agreement. It is true that the plaintiff in error could properly do certain acts tending to secure the docketing, but after all the docketing of the cause, which was the essence of the whole matter, depended solely upon the decision of this court. I did not agree that plaintiff in error was or was not to secure this action, but I simply agreed that if a future event, out of the power of either party to control, happened one way, then I should not raise any barren and technical question. If, however, the decision was the other way, then the whole stipulation fell to the ground. The docketing was a condition precedent, I reiterate, to any agreement whatsoever. It is unimportant whether or not plaintiff in error did everything in her power to secure that docketing. The event never happened; I never made any agreement, therefore.

Passing that point we come to a stipulation to perform a certain act, definite, entirely possible of performance, viz: to tender me the bill of exceptions by November 15th. This was never done. It cannot be urged that I, by any sort of means, waived any question arising by reason of the failure of the future event to happen or by reason of the failure of parties to come within their stipulation as to tendering the bill of exceptions. On the contrary, counsel for plaintiff in error were notified that I should take ad-

vantage of all questions that could be raised as to the filing of the bill of exceptions and the failure to come within the rules. I could not decline to examine the bill of exceptions, because, as the event proved, the judge might allow it. I could not prevent the filing of the bill, though I objected and excepted. If this stipulation ever had any possibility of validity when it was made, it could only have been valid according to the intent of the parties, that is, if it is construed as every legal instrument within the cognizance of the law, since there was any law, has been construed. At the very threshold of the affair the intent of the parties, the place where their minds met in agreement, was torn out of the instrument. It fell to the ground; it became void. I therefore fail to see how this dead thing could give life more than three months after its death, to a bill of exceptions which could have only come into existence through it.

It is thought that no escape is possible from the conclusion that the right of the judge to sign the bill of exceptions on February 21, 1891, must be determined independently of the stipulation and as if it had never been entered into.

Assuming this, what are the rights of the parties?

A judgment is entered July 10, 1890, and the defendant given until November 1, 1890, to file her exceptions. She fails to do so until February 21, 1891. The statutory terms of the Circuit court of the United States for the Northern district of Illinois are required to be held on the first Monday of July and the third Monday of December of each year. (R. S., Sec. 658.) By rule 21 as prescribed by that court, adjourned terms are held on the first Mondays of March, May and October of each year. By rule 23 of the same court, process may be made returnable to the first day of any regular, special or adjourned term.

The verdict in this case was recorded at the December term, 1889, and judgment rendered at the July term, 1890. (Rec., 20.) The time given by the court, November 1, 1890, was a time within the same term. The trial was had before the Honorable Romanzo Bunn, district judge for the Western district of Wisconsin, who at the trial was sitting as a circuit judge in the Northern district of Illinois. The order overruling the motion for a new trial was entered by the circuit judge (Gresham), as the record states, by the direction of Judge Bunn. (Rec., 20.) If the latter in Wisconsin had no jurisdiction to enter the order, it would probably be considered valid as having been entered by the circuit judge, and hence his order; but what authority had Judge Bunn, in February, 1891, sitting at Madison, Wisconsin, as the record indicates, (Rec., 285), and as the fact was, to direct the clerk of the Circuit court of the Northern district of Illinois to file any papers as of July 10, 1890, or any other date?

But assuming for the purpose of argument only, that he was still authorized to exercise the powers of a circuit judge in the Northern district of Illinois, it is confidently submitted that neither he nor any other judge in that district had any power to enter any orders in the case of *Waldron* v. *Waldron*. That case had passed beyond the jurisdiction of the Circuit court. This has been decided by this court in *Mueller* v. *Ehlers*, 91 U. S., 249.

In that case there was an attempt to file a bill of exceptions at a time after the expiration of the term of court at which judgment was rendered and in the absence of any order granting an extension of time. The opinion of the court was delivered by Mr. Chief Justice WAITE and as it is short, we quote it in full:

> "It perhaps sufficiently appears from the bill of exceptions in this case, if it is to be taken as a part of the

record, that the rulings complained of were excepted to in proper form at the time of the trial; but it does not appear that the bill of exceptions was filed, signed, tendered for signature, or even prepared, before the adjournment of the court for the term at which the judgment was rendered. No notice was given to the plaintiff of any intention on the part of the defendants to ask for the allowance of a bill of exceptions, either during the term or after. No application was made to the court for an extension of time for that purpose. No such extension of time was granted and no consent given.

"Upon the adjournment for the term the parties were out of court, and the litigation there was at an end. The plaintiff was discharged from further attendance, and all proceedings thereafter, in his absence and without his consent, were *coram non judice*. The order of the court, therefore, made at the next term, directing that the bill of exceptions be filed in the cause as of April 28, 1873, was a nullity. For this reason, upon the case as it is presented to us, the bill of exceptions, though returned here, cannot be considered as part of the record.

"The case differs very materially from that of *United States* v. *Breitling*, 20 How., 253. There the bill of exceptions was prepared during the term, and presented to the court for allowance four days before the adjournment. It was handed back to the attorney presenting it, three days before the adjournment, with the request that he submit it to the opposing counsel. Delay occurred, and the signature was not actually affixed until after the term. Under the special circumstances of that case, the signature, after the term, was recognized as proper. The particular grounds for this ruling are not stated; but it was probably for the reason, that, upon the facts stated, the consent for further time beyond the term for the settling of the exceptions might fairly be presumed. That case went to the extreme verge of the law upon this question of practice, and we are not inclined to extend its operation. It was said by this court in *Generes* v. *Bonnemer*, 7 Wall., 565, that "to permit the judge to make a statement of the facts on which the case shall be heard here, after the case is removed to this court by the service of the writ of error, or

> even after it is issued, would place the rights of parties who have judgments of record entirely in the power of the judge, without hearing and without remedy." This language is substantially adopted in *Flanders* v. *Tweed*, 9 Wall., 425, where it was said, "the statement of facts by the judge is filed upon the 29th of May, 1868, nearly three months after the rendition of the judgment. This is an irregularity, for which this court is bound to disregard it, and to treat it as no part of the record.
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> "As early as *Walton* v. *United States*, 9 Wheat., 651, the power to reduce exceptions taken at the trial to form, and to have then signed and filed, was, under ordinary circumstances, confined to a time not later then the term at which the judgment was rendered. This, we think, is the true rule, and one to which there should be no exceptions without an express order of the court during the term or consent of parties, save under very extraordinary circumstances. Here we find no order of the court, no consent of the parties and no such circumstances as will justify a departure from the rule. A judge cannot act judicially upon the rights of parties, after the parties in due course of proceeding have both in law and in fact been dismissed from the court."

In the case at bar neither the court nor the counsel attempted to postpone the preparation of the bill of exceptions to a date beyond the term; both the dates, November 1, 1890, as fixed by the court, and November 15, 1890, as fixed by the conditional stipulation of counsel, were within the July term, 1890. The court without any extension by its order and without any consent of parties, or standing rule of court, attempts to make a record at a succeeding term. This it was held could not be done.

The writ of error was dated July 15, 1890, and returnable on the second Monday of October, 1890; the citation was dated July 16, 1890, and was returnable at the same time. This brings the case squarely within the decision in *Michigan Insurance Bank* v. *Eldred*, 143 U. S., 293, both upon the

question of the want of power after the term and the want of jurisdiction after the entry of a writ of error in this court.

In that case, Mr. Justice GRAY, delivering the opinion of the court, said:

> "By the uniform course of decision, no exceptions to rulings at a trial can be considered by this court, unless they were taken at the trial, and were also embodied in a formal bill of exceptions presented to the judge at the same term, *or within a further time allowed by order entered at that term, or by standing rule of court, or by consent of parties;* and, save under very extraordinary circumstances, they must be allowed by the judge and filed with the clerk during the same term. After the term has expired, without the court's control over the case being reserved by standing rule or special order, *and especially after a writ of error has been entered in this court, all authority of the court below to allow a bill of exceptions then first presented, or to alter or amend a bill of exceptions already allowed and filed, is at an end.* (*United States* v. *Breitling*, 20 How., 252; *Mueller* v. *Ehlers*, 91 U. S., 249; *Jones* v. *Grover and B. S. Mach. Co.*, 131 U. S. Appx., 150; *Davis* v. *Patrick*, 122 U. S., 138; *Chateaugay Ore and Iron Co.*, 128 U. S., 544.)"

It is to be remembered, too, that not only had the writ of error been entered in this court, but bail for *supersedeas* had been entered in the court below; and also that the action of the court was taken six months after rules 8 and 9 of this court required that the writs of error should be returnable, and the case docketed and the record filed. If this be one of the exceptions which prove the rules, then it seems fair to assume that those rules are barren idealities with no affirmative or practical significance, things within the old paradox of the philosopher, "*Credo quia impossibile est.*"

It is submitted that the bill of exceptions is unavailable, and the judgment below should be affirmed. That neglect to attend to the preparation of the bill of exceptions and to obey these

rules of court, have led to the summary disposition of cases, is shown by the action of the court in a recent instance:

Morse v. *Anderson*, 150 U. S., 156.

Fourth. The bill of exceptions was waived in this case by the suing out of the writ of error and returning the same, and giving a *supersedeas* bond before the bill was settled.

The writ of error and citation taken in July, 1890, were both returnable on the second Monday of October, 1890. The bond was given after the issuance of these writs on July 16, 1890; it is thought that the plaintiff below was powerless thereafter to prosecute her judgment by execution, and that the case was, at least from the 2d day of October, 1890, in this court. It seems illogical to assert that it was in this court and at the same time in the Circuit Court, for any purpose whatever. In effect this court would have no means of ascertaining what case or what kind of a case was before it for its determination until the trial judge should thereafter determine what statement he would submit. I am aware that, in *Hunnicutt* v. *Peyton*, 102 U. S., 333, this court held that a party does not waive his bill of exceptions by suing out a writ of error before the signature of the judge is obtained. This was a case where the bill was signed before the writ of error and citation were returnable and there had been no supersedeas. That this was deemed important is shown by the following language of the court:

> "It is not, therefore, by any means settled, even in England, that suing out a writ of error is a waiver of unsigned bills of exceptions.
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> "We know of no decision in this country that asserts or gives any countenance to such a rule, nor any reason that justifies it, unless it be one in New York, to which we shall refer. True, a writ of error here, as in England, is supposed to remove the record of the court to which it is directed into the superior tribunal. But this is a mere fic-

tion. In neither country is the record itself actually sent up. A transcript only is sent. In England, at common law, a writ of error operated as a *supersedeas* and stayed all action of the inferior court, and thence it was regarded as removing the record and ousting the jurisdiction of that court. The law there has been changed. And here, the writ is of itself no supersedeas. *If there be no bail for a supersedeas, a writ does not stay the action of the trial court.* An execution may be issued and executed though a writ of error is pending. *Much more, it would seem, must the court to which the writ is sent have power during the term in which the case is tried, to put its records and proceedings in form to return them in obedience to the writ.*"

This is further illustrated by the language quoted *supra* from the opinion in *Michigan Insurance Bank* v. *Eldred*, 143 U. S., 293.

Fifth. The bill of exceptions can afford the court little if any assistance in any event. It does not purport to contain the evidence. The record states "which was all the *testimony* "offered on the trial of said cause." (Rec., 262.) Where a like statement was made in a bill of exceptions the Supreme Court of Indiana said:

> "As we have said, the evidence is not in the record. The bill of exceptions states that all the 'testimony' is in the record; but this is not equivalent to a statement that all the 'evidence' is in the record. Testimony is one species of evidence. But the word evidence is a generic term which includes every species of it. And, in a bill of exceptions, the general term covering all species should be used in the statement as to its embracing the evidence, not the term testimony, which is satisfied if the bill only contains all of that species of evidence. The statement that all the testimony is in the record may, with reference to judicial records, properly be termed an affirmative pregnant."
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> *The Gazette Printing Co.* v. *Morss*, 60 Ind., 153, 157.

This distinction has been followed in many cases and seems too clear to require more than its statement. In *Goodwine* v. *Crane*, 41 Ind., 335, it was stated in the bill of exceptions, "The following was all the evidence offered"; and this was followed in the record by what purported to be the evidence. It was held that the evidence was not in the record. Of "the "evidence offered" the court said, "how much of it was ad- "mitted is not shown."

In this court, only such evidence should be put into the bill of exceptions as will be sufficient to clearly present the action of the court with reference to rulings of which error is predicated. If only the *testimony offered* is here, this court cannot know what *evidence* has been received which led to the court's action. There are other objections to the bill of exceptions in this case and parts thereof which may be more appropriately referred to in the argument upon the errors assigned.

It is therefore respectfully submitted that this cause should be disposed of by an affirmance of the judgment of the court below, with damages for the delay unreasonably interposed through the plaintiff's suing out the writ of error after she had ceased to be entitled thereto under the rules and practices of this court.

CHARLES H. ALDRICH,

Counsel for Mary A. Waldron, Defendant in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1894.

TERM NO. 97. **CAUSE NO. 14,504.**

JOSEPHINE P. WALDRON,
Plaintiff in Error,
vs.
MARY A. WALDRON,
Defendant in Error.

Error to the Circuit Court of the United States for the Northern District of Illinois.

REPLY BRIEF OF PLAINTIFF IN ERROR TO THE BRIEF OF DEFENDANT IN ERROR IN SUPPORT OF MOTION OF DEFENDANT IN ERROR TO DISMISS OR AFFIRM.

We shall review *seriatim* the points made by counsel for defendant in error in support of his motion to affirm the judgment or dismiss the appeal herein.

His first point seems to be based upon a misconception. Rule 8, subdivision 5, as the same stood when the writ of error and citation issued, required the said writ and citation to be made returnable not within thirty days from the day of signing the citation, but on the first day of the term next following the judgment in the court below.

That judgment was rendered on July 10, 1890. The first day of the next following term of this court was the second Monday of October, 1890. Both the writ of error and the citation

were expressly made returnable to that day, as the rule then required, being the first day of the October term of this court. (Rec., 292.)

Counsel evidently, in making his first objection had in mind the modified subdivision 5 of rule 8 which was not promulgated until January 26, 1891, (137 U. S., 710), more than six months after the writ of error and citation issued.

The second, third and fourth points urged by counsel in favor of his motion may be considered together.

Our contention is that defendant in error is *estopped* from making either or any of said points by the stipulation of her counsel set forth on pages 3, 4 and 5 of his brief, and by the action of both parties under said stipulation. It was signed October 6, 1890, during the July term, 1890, of the Circuit court, and prior to the expiration of the time, November 1, 1890, allowed the plaintiff in error by order of the court for filing her bill of exceptions. Our connection with the case as counsel for plaintiff in error began long subsequent not only to the stipulation, but to the filing of the bill of exceptions and record, and to the docketing of the cause. The record is our only source of knowledge as to the facts, and to that we shall confine ourselves.

The first point to be noted in the stipulation is that it was entered into by counsel for defendant in error with full knowledge then, as now, of the facts recited in its preamble, that the writ of error and the citation had been previously, on July 15 and 16, 1890, (Rec., 292), issued "returnable at the "October term, A. D. 1890," of this court.

If counsel intended to make the first point which he now makes, he should not have entered into that stipulation. By reciting in it the foregoing facts, and then proceeding to stipulate for an extension of time for filing the bill of exceptions and the transcript, counsel virtually said:

"I waive all objections I might legally have to the writ of "error and citation not being made returnable within thirty "days, if that is required by rule 8, and I will not insist upon "such objection." Besides, counsel, by the stipulation (par., 1) expressly authorized and required the defendant (plaintiff in error), to file in the office of the clerk of this court the very writ of error and citation of which he now complains.

The next point we wish to emphasize in regard to the stipulation is, that *by the mutual consent of counsel* during the same July term in which the judgment was entered, namely, on October 6, 1890, it was agreed (par's. 2, 3, 4, 5, 6) that defendant's counsel should have until November 15, 1890, to prepare and deliver the bill of exceptions to plaintiff's counsel (par. 2), and then the plaintiff's counsel was to have thirty days more to make corrections and alterations therein (par. 3), and then after thirty more days' notice the bill of exceptions was to be presented to the trial judge for settlement and approval (par. 4), and then the same was to be sent to the clerk of the Circuit court with directions to file it *as of the date of the entry of the judgment* (July 10, 1890) (par. 5), and then thirty days beyond that to file the transcript. It requires a very simple computation to show that the various extensions here stipulated for necessarily postponed, *by mutual consent*, the filing of the bill of exceptions until a date long after the close of the July term, 1890, of the Circuit court at which the judgment was entered. That term closed, according to counsel (Brief, 8), on the third Monday of December, 1890. Counting from November 15, 1890, fixed by paragraph 2, thirty days' specified in par. 3, we arrive at December 15th, and thirty more days by par. 4 we reach January 15th, and beyond that a reasonable time for the judge to approve the bill of exceptions and send it to the clerk with directions to file as of July 10,

1890. This might and did very reasonably take until the 21st of February, 1891, when the bill of exceptions was in fact approved by the trial judge and filed by his direction as of July 10, 1890, pursuant to the explicit requirements of par. 5 of the stipulation. Counsel says that the bill of exceptions was first presented to him on January 15, 1891; *but the record does not show this*, nor when it was presented, nor how much time was taken by the respective counsel to examine, correct and alter the same. Whensoever it was presented, counsel admits in his brief (8) that he did not decline to examine it. This must have been after November 3, 1890, when, as he says in his brief (5), the motion to docket as per stipulation was denied. The stipulation itself gave until November 15th to *present* the bill of exceptions to plaintiff's counsel. We find in the record no proof whatever of counsel's assertion that as soon as this court refused to docket the cause as requested, he notified opposing counsel that "this point would be insisted "upon." On the contrary we find the stipulation gave us until November 15th to take the first step, and postponed the signing of the bill for an indefinite time beyond sixty days allowed to counsel.

"When the bill was tendered," says counsel (brief 5), "the "question was distinctly reserved, as certified by the judge. "(Rec., 285.)" Turning to page 285 of the record it will be seen that the question reserved and certified by the judge, so far as the bill of exceptions was concerned, was not that it was presented to plaintiff's counsel sixty days later, or one day later than required by the stipulation, but that it was not filed by November 1st, the time prescribed by order of the judge.

This case is unique in its circumstances and in the foregoing conditions and provisions of the said stipulation. By reason of the *express consent* of counsel it falls exactly, as we understand it, within the saving clauses of most of the decisions of

this court permitting bills of exceptions to be taken and considered as part of the record, although in fact signed by the trial judge after the expiration of the term at which judgment is entered, notwithstanding no order of court entered during the term explicitly extended the time for filing the same to a date beyond the expiration of the said term.

The case of *Müller* v. *Ehlers*, 91 U. S., 249, instead of militating against our position, distinctly sustains us. It holds only that a bill of exceptions cannot be considered as part of the record "where there is no extension of time granted and "*no consent given* to file the bill of exceptions after the term "at which judgment was rendered."

Chief Justice WAITE, in his opinion says: "As early as "*Walton* v. *United States*, 9 Wheat., 651, the power to re- "duce exceptions taken at the trial to form, and to have them "signed and filed, was, under ordinary circumstances, con- "fined to a time not later than the term at which the judg- "ment was rendered. This we think is the true rule, and "one to which there should be no exceptions without an ex- "press order of the court during the term *or consent of the* "*parties*, and save under very extraordinary circumstances." "Here," he continues, "we find no order of the court, *no* "*consent of the parties*, and no such circumstances as will "justify a departure from the rule."

This Court evidently did not then have before it such a stipulation as the one now undergoing consideration, nor such peculiar circumstances and conduct on the part of counsel as will be hereinafter mentioned. Not only was there no consent of counsel in the *Müller-Ehlers* case, but as the opinion states, "no notice was given to the plaintiff of any intention "on the part of the defendants to ask for the allowance of a "bill of exceptions, either during the term or after."

In the case of *U. S.* v. *Breitling*, 20 Howard, 253, cited in

Chief Justice Waite's opinion, the bill of exceptions was entertained and considered, notwithstanding it was signed *after* the term, and there was neither an order of court postponing the filing of it beyond the close of the term, nor any express consent of parties thereto, and "it was probably for the "reason," says the learned Chief Justice, "that upon the facts "stated *the consent* to further time beyond the term for the "settling of the exceptions *might fairly be presumed.*" In other words, express consent was not absolutely necessary; it was enough that circumstances and conduct amounted to consent.

Davis v. *Patrick*, 122 U. S., 138, holds that "where the "parties stipulate that the judge may delay the settlement and "signature of the bill of exceptions, this court will not con- "sider an objection that it was signed after the beginning of "the term at which the writ of error was made returnable and "during a term of the Circuit court succeeding that at which "the case was tried, although the delay extended beyond the "time made in the stipulation." This statement of the *syllabus* fits the present case exactly, even upon counsel's contention that the delay extended beyond the time fixed by the stipulation. In that case the stipulation made during term time was that the bill of exceptions might be settled and signed at any time before November 1, 1883, which was a date beyond the close of the judgment term, October 20, 1883; and the bill of exceptions was not allowed and signed until the 8th day of December, 1883, when it was filed. That was a date, therefore, one month and seven days later than the date fixed by the stipulation. Nevertheless, the motion to strike the bill of exceptions from the files was denied. The opinion cites and approves the case of *U. S.* v. *Breitling*, *supra*.

If it be urged that the delay in the *Davis-Patrick* case was in part, at least the delay of the judge, the vital fact remains,

nevertheless, that the stipulation allowed him to delay until after the close of the term, thus preventing that event—the close of the term—from depriving the court of the power thereafter to sign the bill.

Our case would seem to be a much stronger one for sustaining the bill of exceptions, inasmuch as the delays, first, until November 15th, and two delays of thirty days each thereafter, and further delays besides, were expressly stipulated for by both parties and for the mutual convenience of both in the matter of examining, correcting, altering and settling the bill of exceptions.

Counsel concedes that in *Hunnicut* v. *Peyton*, 102 U. S., 333, this court has held that a party does not waive his bill of exceptions by suing out a writ of error before the signature of the judge is obtained.

We wish to add to the extracts which counsel has given from the opinion of the court in that case.

"Bills of exceptions," said the court, "cannot always be "formally prepared until a considerable time after the verdict "and judgment. They may require in some cases a full state- "ment of almost all that occurred at the trial. Papers neces- "sary to be incorporated may be mislaid, or withheld by the "opposite party; the charges of the judge to which exception "has been taken may not have been filed, or sickness may have "interfered. Meanwhile judgment on the verdict may have "been entered, and unless the party can protect himself by "writ of error an execution may follow. For these reasons "the universal practice is to give reasonable time to make up "the bill of exceptions and obtain the signature. *This is not "altering the record; it is completing it. It is not exercis- "ing jurisdiction over the case.* It is merely putting into "form the record statement of what was done before the writ "of error was sent down.

"In *Brown* v. *Bissell*, 1 Doug. (Mich.), 273, where a bill of "exceptions returned with a writ of error appeared to have "been signed after the writ was sued out, it was held to be, "at most, whether at common law or under the statute, a "mere irregularity, *which was waived by a joinder in error.* "*Witbeck* v. *Waine*, 8 How. Pr., 433."

Counsel cannot disclaim a joinder of error in the present case.

The same opinion further decides that the rules of a court do not necessarily control its action, and that a judge may depart from them in order to effectuate justice. "When an ex- "ception has been taken at the trial and noted, reducing the "exception to form afterwards and attesting it is not making "a new case; it is merely verifying the case as it appeared on "the trial."

It is apparent from the decisions of this court already cited that the *consent of the parties* to the filing of a bill of exceptions after the expiration of the term at which judgment is entered, is placed exactly upon a par with *an express order of the court* during the term allowing the same. The language of the court always is, in substance, that a bill of exceptions should not be signed and filed after the judgment term "with- "out an express order of the court during the term or consent "of the parties." Where there is such consent, it would seem to be just as effectual as such an express order. The subsequent signing of the bill of exceptions does not at all depend upon the court's still retaining jurisdiction over the case. That jurisdiction may have ended with the close of the judgment term. But as shown by the decision in *Hunnicut* v. *Peyton*, *supra*, the signing of the bill of exceptions afterwards "is not exercising jurisdiction over the case," but merely "putting into form the record statement of what was done" when the court had jurisdiction.

The opinions of this court further recognize the force and weight of circumstances and conduct as bearing upon both the action of the judge who signs the bill of exceptions and that of this court in entertaining and considering the same. This is clearly evinced in the decisions and instances already cited where, by reason of the circumstances and conduct of the parties, bills of exception were not refused consideration, although there was neither an express order of court during the term, nor express consent of the parties to the filing of the same after the term.

Necessarily the judge who signs the bill of exceptions subsequent to the term, when he is authorized so to do either by express order during the term, or by consent of the parties, must judge for himself as to what circumstances, what conduct of the parties, and what interpretation of their stipulation will actuate him in examining, settling, approving and signing the same.

Take this case: Judge Bunn, when his action upon the bill of exceptions was requested, was certainly justified and required to look, first, into the written stipulation of the parties; secondly, into the action of the counsel on both sides under that stipulation, involving the question whether there had been any delays, and if so, which side was accountable for such delays, or whether both sides were; also whether there had been on the side of the defendant in error any action or admission amounting to a waiver of the specified times mentioned in the stipulation, and any other circumstance which, in the judge's opinion, would make it inequitable for him to refuse to sign the bill and order the same filed.

It must be presumed that he did take all such matters into consideration before and at the time when he signed the bill, since it clearly appears (Rec., 285), that the learned counsel for the defendant in error was present and was heard before

him in opposition to the signing and the filing of the bill. And it is noteworthy that he did not then object, so far as the record shows, to the sufficiency of the bill—that it contained anything or omitted anything which it ought not to contain or omit. His only objections to it were that it was not filed within the time prescribed by the judge when the appeal was prayed, and that the plaintiff in error had failed to have the case docketed in the Supreme court according to the stipulation of October 8th, as interpreted by the counsel himself. The objection, that it was not filed within the time prescribed by order of the court, November 1, 1890, is obviated by the very terms of the stipulation extending the time. So far as appears, counsel made no showing to the judge as to when the case was docketed, nor do we find it shown in his brief, or otherwise, when and how the case was in fact docketed, and got its present docket place and number. The duty of the trial judge to decide for himself whether he would sign the bill was not sought to be, and could not be controlled by the stipulation of October 8th. The provision in that stipulation was that if the defendant made no default in the performance of the conditions in said stipulation, counsel for the plaintiff (defendant in error), *would "in the meantime" make no motion to dismiss said writ of error* for failure to file said transcript; the meaning of which was, as counsel now contends, that if there was such default, he would or might "in the meantime" make a motion to dismiss the writ of error. This is far from stipulating that he would object to the signing and filing of the bill of exceptions; and this is the only clause of the stipulation that can be supposed to have a bearing upon this phase of the case. Judge Bunn, in view of all the facts before him might very well say in substance to the counsel for defendant in error: "I find nothing in the "stipulation which relieves me now from my duty, as I un-

" derstand it, to sign the bill and let the same be filed." True, I find a clause that if counsel for the defendant should make no default, you would make no motion to dismiss the writ of error, but *no provision that I* should not sign and file the bill, or " *that you would move that I should not do so.*"

Counsel's stipulation expressly enlarged beyond the judgment term of court the time for filing the bill of exceptions, and left that time indefinite, to be governed by circumstances, expressly providing for two postponements of thirty days each, and a further unstated period for the court to approve the bill, and forward it to the clerk for filing.

How much of the extended time covered by the stipulation was consumed by the counsel for *defendant in error*, does not appear to this court. Presumably, it did appear to Judge Bunn.

We cannot agree with counsel that the stipulation of October 8th is to be eliminated from the case. It is one of the *circumstances* which the trial judge was obliged to consider; it was made expressly for his consideration. The case by no means stands as if there never had been any such stipulation.

A very considerable part of counsel's brief is devoted to the stipulation, and to his views of it. It has been dignified by his earnest attention and discussion, as if, after all, it did and does have a great deal to do with the action of the court below, and that of this court in relation to the bill of exceptions.

We must wholly differ from counsel when he says (brief, 7): " I did not agree that plaintiff in error was or was not to se- " cure this action " (the docketing of the case), etc. Compare this contention of counsel with the language in the stipulation: " Now, therefore, it is hereby stipulated and agreed " by and between the counsel for the above named parties, " first, that the above named defendant " (as plaintiff in error)

* * * "shall have the said cause docketed in said Su-
"preme court in its regular order," etc., etc.

The counsel for the plaintiff (defendant in error) certainly did, in and by the second, third, fourth, fifth and sixth clauses of the stipulation, allow to the plaintiff in error the extensions therein provided.

The undertaking of defendant's counsel to file the papers and have the cause docketed as mutually agreed it should be, and the belief of plaintiff's counsel that it could and would be done, may have been the consideration which moved the latter to grant the extensions. But what of that? What if he did accept the defendant's said undertaking as the consideration for his grant, he *granted* the extensions just the same. And they were granted just as irrevocably as if he had granted them for a prepaid money consideration. There was no condition precedent so far as the extensions were concerned. They were granted absolutely and outright.

True, the *preamble* says in reciting why plaintiff's counsel entered into the ensuing stipulations that he was willing to grant the desired extensions provided the said cause should be docketed in this court as early, etc., etc.; but the preamble was not the contract, it was only in the nature of inducement or recital of motives; and the contract, that is to say, the *contracting* begins only with the words: "Now, therefore, it is "hereby stipulated and agreed by and between the counsel," etc. Then the grants of extensions, which follow, are immediate and unhampered by any provisos.

On page 6 of counsel's brief there is an ingenious effort to find, if possible, a proviso in the preamble to import it thence into the contract. "It was, therefore, competent," he says, "to make the stipulation subject to the proviso that the cause "shall be docketed in the Supreme court of the United States "as early," etc., etc.

To this we answer that however competent it was to make the stipulation subject to such a proviso, *it was not so made* in the present instance. There are *five* clauses in the agreement commencing with the words, "Now, therefore, it is hereby "stipulated," and in none of them is there a stipulation which is made *subject* to any *proviso*. Nor indeed is there any proviso properly so-called in the *preamble*, and if there were it would be fruitless. The nearest approach to one *there* is the recital of the plaintiff's counsel's state of mind, namely, that he was *willing* to grant the extensions sought, *provided* the said cause shall be docketed, etc. The court will not, therefore, lose sight of the fact that the language which counsel has quoted, and out which he would gladly construct a proviso wherewith to condition the contract, is not in the contract at all, but only in the preamble, and there even bears the remotest possible resemblance to a proviso in the legal sense.

The stipulation to docket, as embodied in the first of the five clauses cannot be called a *proviso*; it is simply one of the terms of the agreement.

That stipulation was no more the stipulation of the plaintiff in error than it was that of the defendant in error. The language is: "It is hereby stipulated and agreed by and be- "tween the counsel," etc., "that the above named defend- "ant" * * *. "shall have the said cause docketed," etc.

Counsel says (brief, 7): "The distinction is to be kept in "mind that the parties to this stipulation did not intend to "agree that action one way or the other as to the docket- "ing should be obtained from the Supreme court." It strikes us differently, judging from the *joint* undertaking that the defendant should have the cause docketed. The fact is, doubtless, that neither party doubted the success of the motion to docket the cause in the manner agreed upon. It is

not denied that plaintiff in error did everything in her power to secure such docketing. It is conceded that the papers were seasonably filed and the motion made on the 27th of October, shortly after the date of the stipulation.

Counsel has referred to *Morse* v. *Anderson*, 150 U. S., 156, where a judgment was affirmed for want of bill of exceptions seasonably filed. None of the facts of that case are stated in the report. The general principle there applied is not denied. But we find in a note to the case that "the Supreme court will not review discretionary "action of the court below. See note to *Barrow* v. *Hill*, 13 "How., 54."

On page 3 of counsel's brief, he contends that this court "should fail to find before it any case," etc. But on page 13 of his brief, he contends "that the case was, at least from "the 2d day of October, 1890, in this court." It certainly was and is here. So much is admitted by the very motion to dismiss or to affirm the judgment.

It has not been made to appear that the defendant in error has been prejudiced or even delayed by the failure of the motion to have the cause docketed precisely in the manner contemplated by the stipulation.

But there is another chapter of facts bearing upon this controversy, to which attention has not been called in the brief of counsel. Long after the writ of error and citation were returned and filed, and long after the filing of the bill of exceptions and transcript and the docketing of the cause, the counsel for defendant in error, in December, 1892, moved this court, upon his petition therein filed, for a rule upon the plaintiff in error to file here at once additional and satisfactory security for the payment of the judgment, and in default thereof for a rule vacating the supersedeas and dismissing the

appeal pending in this court. That petition, together with exhibits showing the insolvency of the surety on the original bond given by the plaintiff in error is still on file and part of the record herein. The same counsel at that time obtained from us, and himself placed on file our stipulation for the entry of an order herein, which was entered accordingly on his motion, requiring the plaintiff in error to file a new bond in the sum of $25,000, conditioned according to law, and such bond was filed before the 30th day of December, 1892, pursuant to said stipulation and order. These are all matters of record.

Counsel for plaintiff in error did not then in his petition, or otherwise, ask that the "appeal pending in this court" should be dismissed for any other reason, or in any other case than upon failure to give the new bond. He will not claim that he notified either plaintiff in error, her counsel, or her surety on the new bond, that he intended at any time to submit or insist upon the technical motion, or the technical points now made. Indeed, he now submits (brief, 2), "that no "notice to opposing counsel was necessary." Under these circumstances, even if the court should consider his motion otherwise justifiable and sustainable, shall he be permitted to put this case summarily out of court without a hearing upon the merits, and then sue our client and her surety upon the new bond?

We must confess ourselves astonished at the boldness with which counsel repudiates his own stipulation. He says (brief, 2): "Indeed, as rules prescribed by the court for the con- "duct of its own business and the guidance of litigants it is "thought that they are in no way subject to the control of "counsel either by stipulation or conduct."

The plain meaning of this is, that after being instru-

mental in drawing up a stipulation and becoming a party to it, the counsel for defendant in error proposes not to be bound by the stipulation, and appeals to the court to disregard it, because its rules, as he insists, "are in no way subject to the "control of counsel either by stipulation or conduct." Even if the proposition were sound, the counsel ought to be held estopped from advancing it. He must not be permitted to take advantage of his own wrong.

Counsel's last point (brief, 14) is that the bill of exceptions must be rejected because "it does not purport to contain the "evidence," and "because the record states, 'which was all "the *testimony* offered on the trial of said cause.'"

Two Indiana cases are cited in favor of counsel's contention. But it is not difficult to distinguish this case from those, and to show that the bill of exceptions here does purport to contain all the evidence, and all the testimony.

The bill of exceptions extends from page 21 to page 285 of the printed record. On page 26 it reads:

"Thereupon, after further opening statement to the jury by "counsel for plaintiff and an opening statement to the jury by "counsel for the defendant, the counsel for the plaintiff, in "order to maintain the issues in her behalf, *introduced evi-*"*dence* as follows:"

Then follows *plaintiff's* evidence, both oral and documentary. (See record 111, 112, 113, 114, 115, 116, 117, 118) ending on page 119 "which," it is there recited "was all the "*evidence* here offered on the part of the plaintiff on the trial "of the cause." The word "*which*" manifestly refers to the foregoing evidence, both oral and documentary, which had already been referred to as "*introduced*," and the expression "which was all the evidence here offered on the part of the

" plaintiff " precludes the possibility that any other evidence was introduced; no other evidence could have been introduced, if no other was offered.

Then the bill of exceptions proceeds (Rec., 119): "There-" upon the *defendant* to maintain the issues on her part in " said cause *introduced* the following *evidence*:" Then follows the evidence for the defendant running from page 119 to page 239 of the record, and consisting of *depositions* and other documentary evidence, and oral evidence; and at the close of said defendant's evidence, so recited as *introduced* is the recital (Rec., 239): "Here counsel for the defend-" ant rested their case."

We consider this as equivalent to a statement that the counsel for the defendant introduced nothing further. Then on the next page (Rec., 240), under the heading "Rebuttal" is the following: "And thereupon the plaintiff, further to main-" tain the issues upon her part, *introduced the following evi-" dence* in rebuttal, to wit":

The rebutting evidence, consisting of depositions, documents (Rec., 262) and oral evidence, embraces pages 240 to 262, inclusive, and is followed by the recital: "Which was all " the testimony offered on the trial of said cause."

Here, again, we contend that the word "which" referred as pointedly as possible to all the evidence that had gone before, both oral and documentary, and which had been referred to time after time as "*introduced.*" The relative pronoun "*which*" related unequivocally to all that went before, and the expression: "Which was all the testimony offered on the " trial of said cause" meant precisely the same as if it had read: "Which introduced evidence was all the testimony " offered on the trial of said cause."

The word "*testimony*" was evidently used, not in its narrowest and strictest technical sense, but in its broader and more comprehensive sense, a sense in which it could be and is permissibly used in the best writings and by the best lexicographers of the English language. Thus Webster (Unabridged Dictionary) makes it synonymous with "proof"; "evidence"; "attestation"; "affirmation"; "witness"; "confirmation." He speaks of the testimony of the fathers," "the testimony of "historians."

His sixth definition is "(Jewish Antiq.) "The two tables of "the law." "Thou shalt put into the Ark the '*testimony*' "which was given thee." Ex., xxv., 16. His seventh definition of testimony is: "The whole divine revelation." "The "sacred scriptures." "The testimony of the Lord is sure, "making wise the simple." Ps., xix., 7.

The first definition of testimony in the Century Dictionary is: "Witness"; "evidence"; "proof or demonstration of "some fact."

Its sixth definition is *a*. "The scriptures"; "Law of God "in general." *b*. "Specifically the two tables of the law"; "the decalogue."

But independent of dictionary definitions the word "testimony" has long since acquired a legal significance rendering it fitly and constantly applicable to legal documents, such as writs, bonds, deeds, mortgages, certificates and the like, in the familiar phrase "In testimony whereof," etc., etc.

But drawing nearer still to the case of bills of exception, which is the case in hand, we find it stated in Mr. Justice STRONG'S opinion in *Hunnicutt* v. *Peyton*, 102 U. S., 333, that "the Judge's signature is required only for 'testimony' "that the exception was taken at the trial and before verdict,"

and, for his use of the word "testimony" he cites the statute of Westminster where it was enacted that the reduction of the bills to form and the signature of the Judge to the bills required for their attestation was "for a *testimony*."

Is the court now prepared, in view of these authorities, to summarily dispose of this case because the word "testimony" was used instead of the word "evidence"?

But we have found another decision of the Supreme court of Indiana, later and more in point than those cited by counsel. It is the case of *Harris* v. *Tomlinson*, 130 Ind., 426, where it was decided that "the using of the word 'testimony' "for 'evidence' in a bill of exceptions, where the meaning is "obvious, will not defeat the operation of such an instrument." And "the use of the word 'offered' in place of 'introduced' "in a bill of exceptions with reference to the introduction of "evidence is sufficient, if the record affirmatively shows that "all the evidence 'offered' was 'introduced.'"

In the opinion, the court said: "The context makes it "clear that the word 'testimony' refers to the evidence im- "mediately following it, which, as we have said was entirely "documentary. While the word 'testimony' is not synony- "mous with the word 'evidence,' it was in this instance used "in that sense. We can not permit the simple misuse of a "word, where the meaning is obvious, to defeat the operation "of an instrument of such importance as a bill of exceptions."

Our bill of exceptions shows in divers places what evidence, both documentary and oral, was "*introduced*"; and then at the close, using the word "which" to comprehend all that was introduced, says that no more was offered. Of course, then, no more was introduced, as it could not be introduced unless it was offered.

The word testimony if taken in its strictest sense, was as much misused in our case as in the above case in 130 Indiana.

The simple misuse of that word, the meaning being obvious, should not in this case, any more than in that, defeat the operation of the bill of exceptions.

Respectfully submitted.

WILLIAM H. BARNUM,

Attorney for Josephine P. Waldron, Plaintiff in Error.

H. J. CALDWELL,

LOUIS J. PIERSON;

Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

JOSEPHINE P. WALDRON,

Plaintiff in Error,

vs.

MARY A. WALDRON,

Defendant in Error.

In error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR PLAINTIFF IN ERROR.

MAY IT PLEASE THE COURT:

The full assignment of errors in the record in this case is as follows: (Record, print. pages 287, 288, 289, 290, 291; original, 496 to 503, inclusive); but we have limited our discussion to those assignments printed in italics.

First. The court erred in permitting said action to be maintained.

(*a.*) *It appearing by the record that said action was brought by the plaintiff below, as the former wife of one Edward H. Waldron, against the defendant below, the present wife of said Edward H. Waldron, for alienating the affections of said Edward H. Waldron. Said action is not maintainable either at common law or by statute.* As affecting this question—

1. The Circuit court erred in overruling the motion in arrest of judgment and in the other rulings herein set forth.

(*b.*) *It further appearing by the record that prior to commencing said suit the plaintiff below had voluntarily procured a divorce from said Edward. H Waldron, on her own application, she thereby voluntarily barred herself from all legal right to his affections and to maintain this action for the alienation thereof. As affecting this question—*

2. *The Circuit court erred in sustaining the demurrer to the first plea of the defendant below.*

3. The Circuit court erred in refusing to allow the defendant below to amend said plea.

4. The Circuit court erred in refusing to instruct the jury as requested, that their verdict must be for the defendant below.

5. The Circuit court erred in overruling the motion in arrest of judgment.

Second. The Circuit court erred in permitting counsel for plaintiff below in his opening statement of the case to the jury to read to the jury and comment thereon, as being conclusive on the defendant below by reason of a decree in that cause, the parts of the record of the proceedings of said plaintiff below against said Edward H. Waldron for divorce containing charges against the defendant below, substantially to the same effect as those in the declaration in this cause.

Third. The Circuit court erred in admitting on the trial improper evidence on the part of the plaintiff below over the objections of the attorneys for the defendant below—that is to say:

(*a.*) The evidence of the plaintiff's witness, Henry Kirtland, as to the disposition by the defendant of the property and effects of her deceased husband, E. S. Alexander.

(*b.*) The evidence of the plaintiff's witness, Marius Kasperson, to the same effect and of conversations of the defendant on that subject.

(*c.*) *The evidence of the plaintiff of the inducements, threats or coercion of her husband, Edward H. Waldron, as influencing or compelling her action in procuring the divorce in LaFayette, Indiana, in June, 1887.*

(*d.*) The evidence of the plaintiff's witness, Willard W. Waldron, to the same effect, and of the agency of one Robert Davie for said Edward H. Waldron, as well as of the acts of said Edward H. Waldron, in procuring the divorce or in assisting in or compelling its procurement.

(*e.*) *The evidence of the plaintiff's witness, William C. Wilson, on the same subject, and of the reluctance of the plaintiff to procure said divorce, and of the agreement of said Robert Davie, the agent, and of A. Orth Behm, as attorney of Edward H. Waldron in the divorce proceeding, to furnish the evidence on which to grant said divorce, and as to who were the witnesses in that suit, and as to the payments of money by Edward H. Waldron in connection with the procurement of said divorce.*

(*f.*) *The evidence of the plaintiff's witness, A. Orth Behm, on all these subjects, and as to the agency of said Robert Davie for said Edward H. Waldron.*

(*g.*) The testimony of the plaintiff's witness, John M. Larue, as to who were the witnesses in said divorce proceeding.

(*h.*) The deposition of John C. Brockenbrough as to the amount of money sent by said Edward H. Waldron to said Robert Davie about the time of the divorce proceeding.

(*i.*) *The certified transcript of the record of said divorce proceeding, particularly the part thereof containing charges against the defendant below.*

(*j.*) *The statutes of Indiana as to how and for what causes divorces could be procured in that state.*

(*k.*) *The testimony of the plaintiff below as to transactions and the purport of conversations occurring in the absence of the defendant, particularly on the occasion of the interview with Edward H. Waldron at the Beaurivage flats, and as to what occurred, and the state of their relations at the time Edward H. Waldron left LaFayette in June, 1886.*

(*l.*) *The testimony of plaintiff below and other witnesses as to the contents of letters and telegrams without producing the same, or laying a proper foundation therefor.*

(*m.*) *Parts of the depositions of William C. Wilson, A. Orth Behm and John M. Larue, after said depositions had been suppressed by order of the court.*

(*n.*) In admitting testimony as to the pecuniary condition of the plaintiff below, particularly her own testimony as to her property.

(*o.*) In admitting proof as to the financial condition of the defendant below and her alleged wealth.

(*p.*) In admitting other improper evidence upon the part of the plaintiff below.

Fourth. The Circuit court erred in refusing to admit proper evidence offered by the defendant—that is to say:

(*a.*) *The Circuit court erred in refusing to allow the defendant, upon the cross-examination of the plaintiff below, to prove the conversations between herself and her said husband, Edward H. Waldron, and her admissions relative to a permanent separation and the procurement of a divorce.*

(*b.*) *The Circuit court erred in refusing to permit the defendant, upon the cross-examination of the plaintiff below, to prove the admission and statements made to her by her said husband, Edward H. Waldron.*

(*c.*) *The Circuit court erred in refusing to permit the defendant, upon the cross-examination of the plaintiff below, to prove the accusations and charges made against her by her said husband, Edward H. Waldron, in conversations had between them prior to the divorce.*

(*d.*) The Circuit court erred in refusing to allow the defendant to prove by the plaintiff below, on her cross-examination, the explanation made by her relative to matters connected with her divorce from her first husband Beauchamp.

(*e.*) *The Circuit court erred in refusing to permit proper cross-examination of the plaintiff below, on other matters material to the issue.*

(*f.*) *The Circuit court erred in refusing to permit Edward H. Waldron, when called as a witness for the defendant, to testify as to his statements and declarations to the plaintiff below, as to his intentions of a permanent separation and loss of affection for her prior to the alleged acts of the defendant, and as to other matters.*

(*g.*) *The Circuit court erred in refusing to permit Edward H. Waldron, when called as a witness for the defendant, to testify to the statements, declarations and admissions of the plaintiff below, on matters material to the issue.*

(*h.*) *The Circuit court erred in refusing to permit proper examination of said Edward H. Waldron, when called as a witness for defendant, on other matters material to the issue.*

(*i.*) The Circuit court erred in refusing to admit other proper evidence offered by defendant below.

Fifth. The Circuit court erred in permitting the plaintiff below, in her direct examination, to testify in her own behalf as to occurrences and transactions and give her own interpretation or version of the subject-matter or substance and meaning of conversations between herself and her said husband, Edward H.

Waldron, over the objection of defendant, and then refusing to permit defendant to cross-examine her as to the actual language used, then in afterwards permitting partial cross-examination as to the transactions and the subject of the conversations, but refusing to permit cross-examinations as to the conversations themselves, and afterwards, over objection of the defendant, in striking out part of such direct and cross-examination without specifying distinctly or pointing out to the jury exactly what parts were so stricken out.

Sixth. The Circuit court erred in permitting improper arguments to the jury by both counsel for the plaintiff below in their summing up of the case at the conclusion of the evidence, over the objection of the defendant.

(*a.*) *In commenting to the jury on the record of the divorce proceedings at LaFayette, Indiana, the statutes of Indiana as to divorce, the testimony as to what witnesses were called in said divorce case, and the testimony as to what grounds for divorce could not have been proven, and arguing to the jury that said divorce must have been granted on the grounds of improper conduct of the defendant below with said Edward H. Waldron, and that the said record was conclusive on that point.*

(*b.*) In arguing to the jury that the said witness, Robert Davie, procured the information to which he testified in said divorce proceeding from said Edward H. Waldron after the court had excluded the evidence of Robert Davie on that subject.

(*d.*) *In permitting other improper statements to the jury by both counsel for the plaintiff below.*

Seventh. The Circuit court erred in refusing to instruct the jury as requested by defendant below.

Eighth. The Circuit court erred in saying to the jury that the record of said divorce proceeding was conclusive.

Ninth. The Circuit court erred in construing the Statute of Illinois on the right of husband and wife to testify for or against each other in this action.

Tenth. The Circuit court erred in charging the jury as follows:

"We know as a matter of common knowledge and observation that, as a general rule, men woo and women are wooed and won; that men seduce and allure and lead women from the path of virtue, and that women are allured, seduced and led astray; but we also know, from common observation, that this general rule does not always hold, and that sometimes women woo men; that sometimes women allure, seduce and debauch men; that women, upon occasions, allure, induce and persuade men to abandon and desert their wives and form new relations, lawful or unlawful. It will be for the jury to say, from all the evidence, what were the facts in this cause and whether the issue stand proved or unproved."

Eleventh. The Circuit court erred in its charge to the jury, on the measure of damages to plaintiff below, as follows:

"The ground of damages will be mainly the injury to the plaintiff's feelings, the loss of her husband's support, his affections, his aid, society and companionship caused by the wrongful acts of the defendant, and should be fairly and dispassionately assessed according to the nature and extent of the injury so sustained by the plaintiff, from a full and careful consideration of all the evidence and circumstances in the case, including, of course, the evidence given you of the pecuniary circumstances of the defendant, and in addition, damages compensatory in character. If the jury believe that the injury was inflicted wantonly and maliciously, they may, in their discretion, add thereto such sum as they may think just and proper as exemplary or punatory damages as a punishment to the defendant."

Twelth. The verdict of the jury was excessive.

Thirteenth. The verdict of the jury was contrary to the law.

Fourteenth. The verdict of the jury was contrary to the evidence.

Fifteenth. The Circuit court erred in overruling the motion of the defendant below to set aside the verdict and grant a new trial.

Sixteenth. The Circuit court erred in overruling the motion of defendant below in arrest of judgment and awarding judgment on the verdict.

CHARLES B. McCOY,
Attorney for Plaintiff in Error.

The declaration in this cause is as follows (Pr. Rec., page 3; original page 6):

"Mary Waldron, who is a citizen of Indiana and resides at LaFayette in said state, plaintiff, by Charles H. Aldrich, her attorney, complains of Josephine P. Waldron, who is a citizen of the State of Illinois and resides at Chicago in the Northern district of said state, defendant, of a plea of trespass on the case, for that, whereas, the said defendant contriving and wrongfully, wickedly and unjustly intending to injure the said plaintiff, and to deprive her of the comfort, fellowship, society, aid and assistance of Edward H. Waldron, the then husband of the said plaintiff, and to alienate and destroy his affection for said plaintiff on, to wit: the 6th day of June, A. D. 1886, and on divers other days and times between said 6th day of June, A. D. 1886 to the 21st day of June, A. D. 1887, at, etc., wrongfully, wickedly and unjustly debauched and carnally knew the said Edward H. Waldron, then and there still being the husband of the said plaintiff, and thereby the affection of the said Edward H. Waldron for the said plaintiff was then and there alienated and destroyed, and also, by reason of the premises the said plaintiff from thence hitherto wholly lost and was deprived of the comfort, fellowship, society and assistance of the said Edward H. Waldron, her said husband, in her domestic affairs, which the said plaintiff during all that time ought to have had, and otherwise might and would have had, etc., aforesaid.

"And for that whereas the said defendant contriving and wrongfully, wickedly and unjustly intending to injure the said plaintiff and to deprive her of the comfort, fellowship, society,

aid and assistance of Edward H. Waldron, the then husband of the said plaintiff, and to alienate and destroy his affection for the said plaintiff on, to wit: the 6th day of June, A. D. 1886, and on divers other days and times between said 6th day of June, A. D. 1886, and the 21st day of June, A. D. 1887, at, etc., wrongfully and unjustly sought and made the acquaintance of Edward H. Waldron, the husband of the said plaintiff, and then and there, well knowing that said Edward H. Waldron was the husband of said plaintiff, wrongfully, wickedly and unjustly besought, persuaded and allured the said Edward H. Waldron to desert and abandon the said plaintiff, and thereby the affection of the said Edward H. Waldron for the plaintiff was alienated and destroyed, and also by reason of the premises the plaintiff has from thence hitherto been wholly deprived of the affection, society, aid and assistance of her said husband *in her said husband* in her domestic affairs which the plaintiff during all that time ought to have had, and otherwise might and would have had, and also by reason of the premises the said plaintiff during all said time from thence hitherto suffered great mental anguish and loss of social reputation, at, etc., aforesaid, to the damage of said plaintiff of one hundred thousand dollars, and therefore she brings her suit, etc."

To which the defendant filed her special plea and the plea of general issue. (Pr. Rec., p. 5; original, p. 9.)

The special plea is as follows:

"And the said Josephine P. Waldron, defendant, by A. & C. B. McCoy, her attorneys, comes and defends the wrong and injury when, etc., and says that the said several causes of action in the said declaration mentioned, grow out of the relation of husband and wife heretofore existing between said plaintiff and one Edward H. Waldron in said declaration mentioned, and that said causes of action are only maintainable by reason of the said relation of husband and wife.

"That prior to the commencement of this suit on, to wit: the 21st day of June, A. D. 1887, the said plaintiff by her own act voluntary terminated the relation of husband and wife therefore existing between herself and said Edward H. Waldron by procuring from him a decree of divorce, and from thence hitherto the said relation of husband and wife between said plaintiff and said Edward H. Waldron has ceased and

been determined, by reason whereof the said several causes of action in said declaration mentioned are not now maintainable by the said plaintiff; and of this the said defendant, Josephine P. Waldron, puts herself upon the country."

To which was filed a general demurrer. (Pr. Rec., p. 6, original, p. 10.)

Which demurrer was sustained by the court, to which ruling defendant by her attorney duly entered her exception. (Pr. Rec., page 7, original page 14.)

The facts in this case, briefly stated, are as follows: The defendant in error at the time of her marriage to Edward H. Waldron had been divorced for several years from a former husband named Beauchamp, by whom she had one son, who at the time of the marriage of defendant in error to Edward H. Waldron in 1865, was seven or eight years of age.

Defendant in error and Edward H. Waldron were married at Syracuse, New York, in 1865, but were at that time residents of LaFayette, Indiana, where they had formerly resided for several years prior to said marriage, defendant in error having been engaged in the millinery business, and Edward H. Waldron being at the time of his marriage a clerk in the office of the Monon railroad on a salary of fifty-five or sixty dollars per month. Prior to his marriage with defendant in error said Waldron had been boarding at the house of defendant in error, whose family consisted of herself, her mother, her brother, and her said son by the divorced husband, Beauchamp. Defendant in error and said Waldron resided at LaFayette after their marriage up to about June 1, 1886, or for a period of about twenty-two years. (See testimony of defendant in error, Pr. Rec., pages 65, 66; original pages 117, 118, 119.)

It further appears from the evidence in this case that defendant in error and said Waldron had lived very unhappily together during a considerable part of said period; that there had been

dissensions and much discord between them growing out of, to a great extent, the fact of the son of said defendant in error, by her former husband, living in the family and being of a worthless and dishonest character; that he had frequently gotten into trouble; had been in the penitentiary and was out of employment most of the time; that he frequently took articles from the house and sold or pawned them, and though Mr. Waldron had requested that he should remain away from the house entirely, yet in Mr. Waldron's absence his mother received him at the house and continued to assist him in many ways contrary to the wishes of her husband. (See testimony of Edward H. Waldron, Pr. Rec., p. 156, 157.)

It is also in evidence (see testimony of Edward H. Waldron, Pr. Rec., p. 160) that the infelicity of the marriage relation between himself and defendant in error was also largely due to jealousy on her part.

A further fact in the case is that Edward H. Waldron and the defendant in error were acquaintances and friends of Mr. E. S. Alexander and wife who lived at No. 2028 Michigan avenue, in the city of Chicago; that the plaintiff in error, formerly Mrs. Alexander, had been the wife of said E. S. Alexander, from 1857 until February, 1886, when Mr. Alexander died.

Mr. Edward H. Waldron's testimony on this point in regard to his acquaintance with Mr. E. S. Alexander (Pr. Rec., page 163, 164, 165), is as follows:

"I think I was acquainted with Mr. and Mrs. E. S. Alexander before the death of Mr. Alexander, twelve or fifteen years. As an officer of the various railroads while I was connected with them I had business transactions with Mr. Alexander in his life-time; I bought supplies from him. He was in the railroad supply business; I rarely ever came to Chicago without meeting him. My relations towards him of a personal character were decidedly friendly—warm personal

friendship. I looked upon him as the best friend I ever had. He was in LaFayette during these years once in a while, not frequently, but he visited me in LaFayette on several occasions and he was at my house; he was acquainted with the plaintiff. When I was in Chicago prior to his last illness it was customary for me to go to his house and stay all night very often when I came to Chicago. * * * I met Mr. Alexander at his request a short time prior to his last illness. He asked me to go down to Tolleston, Indiana, where he owned a farm and had some cattle. He wanted me to take charge of the farm and sell it all. I made an arrangement at that time to take care of the stock for him and get rid of the stock, and I went there on one occasion to look after the stock in connection with that business.

"During his illness and during the last of December I saw him at his house. At that time he was very ill. I remained at that time all night, I think, and returned to LaFayette on the morning train. I came here two or three times, possibly four times, during his illness. I did receive telegrams; I don't remember who sent them. The telegrams were merely notifications to me of his condition and whether I better come. If he grew worse I would come up. I don't remember just the date when he went to Louisville. I think it was the latter part of January. I was not in Chicago during the time he was in Louisville. I was not in that house at all after he went to Louisville until after he was brought home and died there. The next time I was there after he left for Louisville was the day following his death. * * * When I first came here in the spring of 1866, after the death of Mr. Alexander until I came here and opened an office, and came for the purpose of opening the office, I did not meet Mrs. Alexander very often; I think once a week or perhaps twice a week. After the death of Mr. Alexander, Mr. Walker asked me if I would not take charge of the disposal of the fancy stock Mr. Alexander had at Tolleston and go on and carry out the arrangement I had made with Mr. Alexander. Mrs. Alexander was administratrix with Mr. Walker of the estate, and I gave that matter more or less attention at the request of both Mrs. Alexander and Mr. Walker. I had interviews with Mrs. Alexander, the defendant, relative to that matter, and I also had interviews with Mr. Walker about it, and I had interviews with both, at her home relative to that matter."

It is also undisputed that in 1886 Mr. Waldron took up his residence permanently in the city of Chicago and ceased to live with the defendant in error, who continued her residence at LaFayette; and that to the May term of the Superior court, 1887, Tippecanoe county, Indiana, the defendant in error filed her complaint against the said Edward H. Waldron for divorce; and that in June, following, the defendant in error obtained a decree of divorce in said cause; that in September, 1887, a little over a year and a half after the death of Mr. Alexander, said Edward H. Waldron and the plaintiff in error were married; and that in the following June, 1888, the defendant in error began this suit against the plaintiff in error, then the wife of said Edward H. Waldron, and recovered a judgment for $17,500. (Pr. Rec., 285; orig., 490.)

The first error which we shall consider relates to the special plea of the defendant, which was overruled by the court. The position taken by counsel for plaintiff in error on the trial was that the defendant in error, having been divorced from the said Edward H. Waldron prior to the commencement of said suit, had no claim upon his affections because their relations as husband and wife had terminated, by plaintiff's own procurement.

We take up this assignment of error first, not because we consider it the chief error on which we base our expectations of a reversal of the case, since there are others of commanding prominence, but because it appears first in its relation to the suit.

We are not aware that in the courts of last resort, in any of the states, this point has been passed upon; but the reason of the objection to the action rests, it seems to us, plainly and sufficiently, on the admitted fact, that the plaintiff below voluntarily, as is conclusively shown by the fact of the decree of

divorce having been granted at her instance, placed herself in a position where she was estopped from claiming damages on account of having lost the society and affections of the said Edward H. Waldron. There is some question, as to whether the action would lie by the wife while the relation of husband and wife still existed, and of course, if it would not in such case, there can be no reason for claiming that it would lie after the marital relation had ceased.

The Supreme court of Wisconsin, in the case of *Duffies* v. *Duffies*, 76 Wis., 374, in an opinion filed in that court April 8, 1890, held that neither at common law nor by the statute, could a wife maintain an action in damages against one for wrongfully and maliciously enticing away the husband. And in that opinion the court says:

"According to common reason and decided weight of authorities, neither of these statutes (referring to those statutes giving the wife right of action against person who caused the drunkenness of the husband, on the ground that it is an injury to her person, property or means of support) gives the wife any right of action for the *consortium* of her husband.

"The loss of her husband's society is not an injury to her person, property, means of support or character, and such an action cannot be forced within the terms or spirit of the statutes by the most strained and liberal construction. Such a right of action does not exist by law, nor can it be inferred from the ameliorated and changed conditions of the wife and her equality with her husband produced by modern legislation in her behalf. Whatever equality of rights with her husband she may have, it is not proper to say that 'her right to the society of her husband is the same in kind, degree and value as his right to her society.'"

This decision goes into the question very thoroughly, and discusses it in the light of all the decisions on the point up to that time. We are aware that other courts have held differently, but we do not consider that there is any such unanimity of decisions against the view taken by the Wisconsin court as to

in any way weaken the force of the arguments there used, or to detract from its value as the opinion of a court of last resort.

The decision of the Supreme court of Maine, in the case of *Doe* v. *Roe*, 82 Me., 503, is in harmony with the Wisconsin court on this point.

We think the demurrer to the special plea of the plaintiff below should have been overruled; but the court below held that the action would lie, and we shall therefore, in discussing the evidence, proceed on the theory that in case the action shall be held by this court to lie, then there should be a reversal of the case for other errors appearing in the record.

We shall proceed now to the consideration of the errors of the court below in admitting improper evidence on the trial. And on this point we shall consider, first, those errors in connection with the admission in evidence of the record of the divorce proceedings begun by defendant in error, and whereby she procured a divorce from her husband, the said Edward H. Waldron, in the Indiana court.

The offer of the said record, in evidence appears on page 108 printed record original page 185, and is as follows: Counsel for plaintiff thereupon offered in evidence a certified copy of the record of the divorce proceedings of the plaintiff from Mr. Waldron.

Mr. WALKER, for the defendant: I object to that record on the ground that there are certain charges made in the petition, as it is called under the Indiana code of practice, reflecting upon the character of the defendant made by the plaintiff herself in the case which she instituted in Indiana, without the knowledge, and certainly without the approval of the defendant here. Otherwise we have no objection to it.

The COURT: I will admit the record for the purpose of showing the divorce, but that portion of the declaration which reflects on the character of the defendant will be omitted; it will not be read to the jury.

Mr. WALKER: The fact that the plaintiff procured a divorce on her own petition from Mr. Waldron, has already been proven by the evidence in the case and will not be denied; we admit the fact.

Mr. ALDRICH, for the plaintiff: We don't want that. We want this to go in as a record, and your Honor may control it by such instructions as you think under the circumstances you ought to give. The record is an entirety, and is properly certified. *We want it for everything.* We propose to connect the defendant with this.

Mr. WALKER: If they connect her with it, I shall withdraw all objections to it, but I object to it going in evidence till they make the connection.

Mr. ALDRICH: It is a fair question of argument whether we have not made the connection of this defendant with these proceedings, already.

The COURT: The plaintiff's declarations in the complaint in this case are not evidence at all. You favor the admission on the supposition that Mr. Waldron himself knew about these allegations in the complaint, and directed the proceedings.

Mr. ALDRICH: Not only that, but also on the fact that we have already shown in evidence that Mr. Waldron was the guest of the defendant, lived in her house; that they were indulging in embraces, kisses and terms of endearment at that time, and that the divorce proceedings followed very soon after. I submit it is a circumstance to be taken in consideration for the purpose of determining whether or not at that time she did not know and was not concurring in all the steps that were necessary for the purpose of severing this tie in order that others might be entered into. *I want the record for every purpose for which we can legitimately use it in argument.*

The COURT: It is competent evidence to go to the jury if you can show that the defendant was connected with it or cognizant of it. Still I do not see how that would make the plaintiff's allegations in the declaration competent evidence, unless the defendant knew about the divorce proceedings or helped to institute them. I don't think those declarations reflecting on the character of the defendant in this case ought to go to the jury as evidence. You have had the witness who made the declaration on the stand, and she has testified to everything she knew about it; to take her declaration in a proceeding for divorce as evidence of the truth, I do not think that ought to

go to the jury. She has testified to all she knew about Mrs. Alexander's connection with the affair. *You want to add to that her outside statements made several years ago.* Your proposition to admit the record as *evidence of the divorce* is perfectly consistent and proper, but to admit it for the purpose of proving certain issues in the case seems to me is entirely improper. If there is sufficient evidence in the case to go to the jury that the defendant in this case instituted the proceeding, or that Mr. Waldron did it with her knowledge and consent, if there is anything in the case that you can argue to the jury that fact, or that he was responsible for this part of the declaration, it might be competent, but it seems to me that it is a little too far fetched under the testimony so far. Of course there is some evidence tending to show that he wanted her to get a divorce, and you have marked letters, I suppose, which you have not introduced on that subject. How much there will be to show that he instituted those proceedings, I don't know; I hardly think there is enough so far to make the defendant responsible for the declaration in that pleading.

Mr. WALKER: There is not one particle of proof up to the present time that Mr. Waldron had the slightest suspicion that those charges were made against Mrs. Alexander; he had no knowledge of it, and never directed it; he had no suspicion that they were made.

The COURT: I do not see any objection to introducing it for the purpose for which you propose it, but to introduce it for the purpose of proving a distinct issue here by declarations in that complaint, I don't think it will be competent. If you expect to get a verdict here you ought not to be too anxious to get in evidence that is improper.

Mr. ALDRICH: That is not what I want to do, your Honor. I do not want to offer them as declarations at all; I want to offer them as part of the record. You can't admit a portion of a record for any purpose; we have got to have the record as it is certified here.

The COURT: If you introduce evidence to make it compepetent to charge Mrs. Alexander with responsibility with these declarations, it will be all right. That portion of the complaint which reflects upon the character of Mrs. Alexander cannot be read.

Mr. WALKER: *I object to any portion of that record going in for any purpose, because it is not a record that binds the de-*

fendant at all, and is not a record of any case to which she was a party or in which she was a witness. I wish my objection and exception entered to it going in for any purpose.

The COURT: I think it is competent evidence, because it shows conclusively to all the world that they were divorced at that time.

And thereupon the court ruled that the said record should be admitted in evidence; *to which ruling of the court counsel for defendant then and there duly excepted.*

The complaint in the record as introduced (Pr. Rec., p. 11; original, p. 188) contains seven clauses, the fifth of which is as follows:

"The plaintiff avers that the said defendant has not been to said plaintiff a good, faithful and kind husband, but she charges, on the contrary, that he has been unmindful of and broken his marital vows in this, to wit:

That he has for more than a year past been guilty of cruel and inhuman treatment of this plaintiff in this, that he has become enamored of one Josephine P. Alexander; * * * that he refuses, and for the last year has refused to return to his home or to this plaintiff, and also refuses to provide for this plaintiff's support, but on the contrary, has absolutely refused so to do, giving orders to his agents to do nothing for the support of the plaintiff and threatens, by his agent, to take and carry away all of the household goods, and to drive her from their home; that she has remonstrated with him in regard to his course, but is only met by scorns and rebuff; that plaintiff charges it and believes it to be true that defendant's sole and only purpose for so doing is induced by his attachment to the said Josephine, and that at his own instance * * * he has pursued such a course of treatment towards this plaintiff as to make it impossible any longer to endure with safety to her health or life."

The first part of paragraph 7 of said complaint is as follows:

"The plaintiff prays for a decree of divorce for the misconduct of the defendant on account of his cruel and inhuman treatment of this plaintiff."

A portion of the decree of divorce as part of said record introduced in evidence, which appears on page 115, printed record, original 192, is as follows:

"And this cause now for trial is submitted to the court without the intervention of a jury, and the court being sufficiently advised in the premises, *finds that the plaintiff is entitled to a divorce from the defendant on account of his misconduct as charged in the complaint herein.*"

Let us now consider some of the reasons which must be apparent against the admission of this record in evidence. It will be seen by reference to the remarks of the court that it is admitted to be improper in so far as it might have the effect of conveying to the jury the fact that *it contained charges against the defendant*, for the reason that the allegations in the complaint were nothing more nor less than statements of the plaintiff in another court and in a matter entirely disconnected from the present suit, before the present suit was ever instituted or perhaps even thought of. It is admitted that the defendant, then Mrs. Alexander, was not a co-respondent in said complaint, and there was no evidence to show at that time in the proceeding of the case, nor afterwards, that even Mr. Waldron himself knew that in the plaintiff's complaint for divorce she had connected Mrs. Alexander, the defendant, with him in the charges made against him in the said complaint.

As Mr. Walker stated, there was not a *particle of proof* that Mr. Waldron had any knowledge or suspicion that the complaint for divorce contained charges against Mrs. Alexander.

Furthermore, there was no necessity whatever for introducing in evidence the record of said divorce proceedings. Defendant's counsel admitted the fact that plaintiff had obtained a divorce. There was no dispute in regard to that matter; and even if there had been, there was still no necessity, for the purpose of proving the divorce, to introduce in evidence any portion of the record, except the decree; and Mr. Aldrich's position was untenable that a portion of the record could not be admitted for any purpose. The mere fact

that Mrs. Alexander the defendant's name was mentioned in the complaint for divorce could not but have its effect upon the jury and necessarily influence them in forming their conclusions as to the relations that existed between Mrs. Alexander, the defendant below, and Mr. Waldron, and consequently had an influence with the jury in leading them to believe that Mrs. Alexander was guilty of alienating Waldron's affections, as charged by plaintiff in her declaration. It was a case of a woman suing the wife of her former husband, and one in which the court should have scrupulously guarded the admission of evidence in order that the jury might not be subjected to the influence of anything not strictly in the line of legitimate testimony. It was one of those cases where the sympathies of the jury, naturally, however unjustifiable, or improperly exercised, would be *with the plaintiff in the case.* We might well suppose every member of the jury to be ready, if not to reach out for, yet, to willingly accept anything which would cast a suspicion upon Mrs. Alexander, the defendant, or which would tend to confirm their belief that they were right in coming to the conclusion that she did alienate the affections of plaintiff's husband. The record was not only unnecessary on account of being immaterial and irrelevant, but it was absolutely improper and extremely prejudicial to the defendant. It was particularly the kind of evidence which when admitted over the objection of the defendant's counsel, constituted error for which the case should be reversed. The mere statement of the court that the portion of the complaint reflecting upon the character of Mrs. Alexander would be omitted in reading the complaint to the jury, did not remedy the matter nor make the record of the divorce proceedings proper evidence, *unless it was legitimate evidence in the first instance.* The statement of the court that declarations reflecting upon the character of the defendant, Mrs. Alexander,

would be omitted in the reading, *of itself* conveyed to the jury, necessarily, the information that there were declarations in the complaint of divorce brought by plaintiff against her husband, which reflected upon the character of Mrs. Alexander, the defendant, and *the omission of them emphasized that fact.* The jury could hear the discussion; the statement had its effect upon their minds; they could not hear it without being impressed with it; and the impression was necessarily unfavorable to the defendant. With this record, and what was said by the court and counsel concerning its admission before the jury, it was an easy matter for them to satisfy themselves that if Josephine Alexander was guilty of charges made against her in connection with Mr. Waldron in plaintiff's complaint for divorce then she must have been an active party in urging or directing Mr. Waldron to either get his wife to procure a divorce or to commit such acts as would furnish her with just grounds for a divorce; and that, therefore, if such things were true of Mrs. Alexander, the defendant, she was guilty of alienating the affections of plaintiff's husband, as charged in the declaration.

Nor was the prejudicial effect of the introduction of the said record limited to what the jury might gather as to declarations in the complaint that were not read; the complaint, as it is herein set forth and as read in evidence, mentions Mrs. Alexander the defendant's name, states that Waldron was enamored of her and that his abandonment and cruel treatment of the plaintiff was due to the attachment which he had for Mrs. Alexander, the defendant. With this improper matter before the jury, the defendant's interests were unduly prejudiced equally as much as though the declarations which were omitted had been read in evidence.

The statement of plaintiff's counsel shows the purpose which they had in urging the admission of the record in evidence.

They did not want it to prove the divorce, which defendant's counsel admitted, but, as Mr. Aldrich said:

"*We want it for everything;* we want the record *for every purpose* for which we can legitimately use it in argument." The use which counsel for plaintiff wished to make of the record of divorce was to help sustain the allegation in the first count of the declaration (Pr. Rec., p. 4) that Mrs. Alexander, the defendant, "debauched and carnally knew the said "Edward Waldron." In fact, we might say the use of the record was for the purpose of getting *something* before the jury that would connect the defendant with the charge *that she* "*debauched* and carnally knew" the plaintiff's husband, for at the time the said record was offered in evidence, as well as at any other time in the trial, *that* charge might as well have been out of the declaration so far as its being connected with any proof was concerned. It was a case of necessity with plaintiff to turn the attention of the jury to the divorce proceedings in order to impress them, if possible, with the *idea*, at least, that the charge of *debauching* had some foundation in fact. And this is more apparent from the fact that the plaintiff brought forward no testimony afterwards that tended to sustain that charge. It was claimed by plaintiff's counsel at the time, to justify its admission, that they would connect the defendant with it; but it had not been done at the time of its admission, *and was not done at any time thereafter during the trial;* on the contrary, it was shown both by the testimony of Mrs. Alexander, the defendant (Pr. Rec., p. 234, original page 403) and Mr. Edward H. Waldron (Pr. Rec., p. 175, original page 298) that neither of them knew of the charges in the complaint for divorce reflecting upon the defendant, then Mrs. Alexander; nor did plaintiff, by any testimony, connect the defendant with the said complaint for divorce, to justify its introduction in evidence as promised by

plaintiff's counsel. If, in a case of this kind, such a record is admissible to prove the allegations of the declaration, it is within the power of any woman who may file a complaint for divorce, to charge another woman with improper conduct with her husband, and by so doing manufacture evidence for future use in a suit for the alienation of her husband's affection. The court seemed to have the correct idea as to the impropriety of introducing the record when the discussion in regard to it began, but further on seemed to overlook the fact that when the defendant's counsel admitted the divorce no grounds remained but the improper ones urged by counsel for admitting the record.

The fact of divorce being admitted by defendant's counsel, it was not even proper to introduce or to have read in evidence *the decree*, inasmuch as in the portion which we have already referred to, it states that the "plaintiff is entitled to divorce from "defendant *on account of his misconduct as charged in the com-* "*plaint herein*"; thereby clearly conveying to the minds of the jury that Waldron's misconduct with the defendant, then Mrs. Alexander, had been proven in the Indiana court, as alleged in the complaint; and if so, the jury would be justified in believing that Mrs. Alexander had been guilty of misconduct with plaintiff's husband, from which it would be impossible to escape the conclusion that she had alienated his affections from the plaintiff, as charged in the declaration. The admission in evidence of the decree was as prejudicial as the admission of the complaint.

We cannot close our comments on this improper evidence without reference to the remarks of the court on admitting the record in evidence, which were: "I think it is com- "petent evidence, because it shows conclusively to all the "world that they were divorced at that time." Now, the oral statement by counsel for defendant, admitting the

divorce, was notice *for the purposes of that trial.* That all the world should know that the divorce had been obtained was not an issue in the case in any manner whatever; the defendant did not, as the case stood then on the pleadings, make the divorce an issue, and had no reason for bringing the matter before the jury; and, therefore, when the plaintiff sought to bring in the record of the divorce before the jury, the defendant promptly admitted the fact of a divorce having been granted, in order that there might be no excuse for bringing before the jury the *ex parte* statements of Mary A. Waldron, made in Indiana a year before the commencement of the action against the defendant in this case.

The admission in evidence of the record as to that part called the complaint, was equivalent to admitting any statements, whether oral or in writing, that Mary A. Waldron, the plaintiff, might have made in Indiana with reference to the conduct of the defendant towards Edward H. Waldron, which, on well recognized principles of evidence, would be entirely improper, because made in the absence of the defendant, and in a case to which she was not privy, and therefore had no opportunity to examine the plaintiff or other witnesses, or to disprove their statements.

Even in cases where it is sometimes necessary between the *same parties* to prove by record a certain fact, the rules of evidence in such cases require that the introduction of the record should be confined to those parts, only, which are necessary to prove a distinct fact properly in issue; and it is well said in Wharton on Evidence, Vol. 1, Ed. 1879, Secs. 828, 832:

"Where the record proof is appealed to merely to establish evidentially (as distinguished from dispositively or from estoppel) some circumstances relative to the case, as, for instance that a decree of chancery was made on a particular day, it will be necessary *only to prove the decree.*"

This is entirely consistent with what we claim in this case, that, *if it had been necessary* to prove the divorce at all, then the introduction of the record should have been confined solely to that part which would have proven the simple fact that a decree of divorce had been entered; in which case the statement in the decree that "the plaintiff is entitled to a divorce from the defendant on account of his misconduct as charged in the complaint herein," would not have conveyed any idea to the jury as to what the *misconduct of the defendant in the divorce suit consisted of*, and therefore could not have suggested to their minds anything relating to the defendant in this suit.

We have the very best of authority to sustain our position that the admission of said record, in this case, in evidence, was an error so prejudicial to the defendant as to call for reversal.

In the case of *Lewis Tappan, plaintiff in error*, v. *John Bardsley et al.*, decided in this court January 9, 1871, opinion by Mr. Justice MILLER, 10 Wall., 427, the admission of the record of divorce in the trial below was held to be error, and the case was reversed. That was a suit brought by *Bardsley et al.* v. *Tappan* to recover ten thousand dollars damages for libel. In the opinion, after stating the facts, Mr. Justice MILLER says:

The questions presented to us for review arise from a bill of exceptions taken on the trial and relate to the objections taken by the defendant to the admission of certain evidence and to the ruling of the court in instructing the jury.

In the admission of evidence we are of opinion that the court committed an error that must have contributed very largely to swell the amount of the verdict, which, without such testimony, was perhaps unusually and unjustifiably large, and might possibly have been for the defendant.

The error referred to was in the introduction of a record of a suit for divorce, brought in the name of John Bardsley's wife against him in the county of Huron, State of Ohio.

The bill of exception states that when this record was offered

in evidence on the part of the plaintiff, the counsel of defendant objected on several grounds, which were overruled; and that when plaintiff's counsel proposed to read the whole record, the counsel of defendant objected and insisted that only so much thereof as showed the nature of the suit and the time of the commencement thereof could be read, and especially that the answer of John Bardsley, the defendant therein, could not be read against defendant in this action; which objections were overruled and the whole of said record was read to the jury, to which defendant's counsel excepted."

After commenting on the various parts of the record that was read to the jury, Mr. Justice MILLER continues:

"The effect of this in aggravating the damages to be recovered is too plain to require comment, and yet Tappan was no party to that suit; had no right to control or influence the making of that record; could not cross-examine the witnesses, all of whom were Bardsley's, nor take any exceptions to or contradict Bardsley's answer. It is difficult to conceive upon what principle the record of that suit was admissible for any purpose whatever in the trial of this one. If the defendant had introduced any evidence to show that a suit for divorce had actually been brought, in support of his statement that there was a rumor that it would be done, then it might have been competent for the plaintiff to show when it was instituted as some evidence that no such rumor existed when Tappan so reported. But it does not appear that Tappan attempted to show in this suit that the divorce suit had ever been instituted—all that comes from the plaintiff, and it is difficult to see what relevancy it had to any issue before the court. If, however, a state of case could possibly have existed to justify the introduction by the defendant of that record for that purpose, it could be used for no other, and the answer of Bardsley and the depositions of the witnesses were not only irrelevant to the issue then being tried, but they were forbidden by other well established rules of evidence.

1. Bardsley's answer was not sworn to and was made with a view to its probable use against Tappan in this suit, and was made when Tappan could neither contradict his statements nor cross-examine him.

Two inconsistent reasons are given in support of the ruling of the court of this point. * * *

It is said, on the other hand, that depositions should have been read because they were a part of the record, and that when one part of a record of a suit is read, all must be read.

When one party introduces and reads from such a record that which suits his purpose, the other party may read for his own benefit all that relates to that subject, or require the party introducing the record to do so. But we know of no rule which, because a party may use a record or part of it to establish a fact, that can only be established *by record*, authorizes the same party to use everything else which may be found in the record, however irrelevant to the issue on trial, or however it may violate other well established principles of the law of evidence."

The opinion of the court then states that if it is possible that the plaintiff had a right to show the divorce suit and to introduce the record for that purpose, yet that did not establish his right to bring before the jury the entire merits of the divorce suit, etc., and the case was reversed for the error in admitting the record in evidence.

This case is so directly in point that we do not think it necessary to discuss its application.

In the State of Illinois the decision in the suit of *Crose* v. *Rutledge*, 81 Ill., 266, furnishes us with another case, where it is held that the admission of a record of divorce in suits of this character, is error. *Crose* v. *Rutledge* was an action of crim. con. by Rutledge, against Crose. In the statement of the case it appears that on the trial the plaintiff offered in evidence the record of a divorce between him and his wife granted to the wife on cross-bill for desertion. In commenting on the admission of this record in evidence the cour tsay:

"As to the record in the divorce case it was conclusive as to the parties to it and privies, but on what principle it was a proper instrument of evidence in the case, we are not advised. It did not tend to prove or disprove any fact in issue between these parties and had no relevancy thereto." And the case was reversed.

The reasons given in these decisions why the record of divorce proceedings was inadmissible, are exactly those urged against the admission of the record in the case we are now considering. Furthermore, the prejudicial effect of the admission of the proceedings in the Indiana court was not limited to what was shown by the record as read in evidence, but it improperly furnished plaintiff's counsel, as they wished it to do, with a foundation for an argument to the jury as to inferences to be drawn from this record touching the relations that existed between the defendant, then Mrs. Alexander, and the said E. H. Waldron. And Plaintiff's counsel did so argue in their closing address to the jury (Pr. Rec., 267–268, original page, 459, 460), and also in their *opening* statement of the case to the jury, in anticipation of the said record becoming evidence in the case, read to the jury from said record (Pr. Rec., 25; original page, 54) the fifth allegation in plaintiff's complaint for divorce, wherein it is stated that her husband has been unmindful of and broken his marital vows in this, to wit:

That he has for more than a year past been guilty of "cruel "and inhuman" treatment of this plaintiff in this, that he has become enamored of one Josephine Alexander, and that the said Josephine Alexander, as plaintiff believes, reciprocates his wishes, and now through her enticement, has so alienated him from this plaintiff that he refuses to return to his home, * * * and plaintiff charges and believes it to be true, that defendant's sole and only purpose for so doing, is induced by his attachment to said Josephine, and that at his own instance, or at her instance, he has pursued such a course, etc.

If there were no other errors in the record we think that this error in the admission of the proceedings of said divorce was so prejudicial to the defendant that the case should be reversed.

We will proceed, now, to a consideration of the assignment of error in admitting in evidence the statutes of Indiana as to how and for what causes divorces could be procured in that state. The facts concerning this error appear in the printed record, page 116; original, page 193, as follows: Counsel for plaintiff offered in evidence the statute of the State of Indiana upon the subject of divorce.

To the introduction of which in evidence counsel for defendant objected on the ground that it was incompetent, immaterial and irrelevant.

The COURT: The court takes judicial notice of the statutes of Indiana. The jury will take the record as conclusive evidence of the divorce. I do not see what more you want.

Mr. ALDRICH: We want to show by the statute of Indiana upon what ground and for what reason divorce can be had; the law of Indiana, for instance, says *abandonment must be for two years. The evidence shows that Mr. Waldron had only been away a year. The statute says divorce can be granted for cruelty. This divorce was not granted for that.*

Mr. WALKER, for the defendant: For the reasons stated we object to the introduction of the statute. The record is presented and that is sufficient evidence that a decree of divorce was granted. Your Honor has held you would not go behind that and inquire into the cause which led up to the decree, that it was not a proper subject of inquiry here.

If it is not a proper subject of inquiry, it would not be a proper subject of discussion before the jury.

The COURT: He may introduce the statute of Indiana to show what the law of divorce is.

(And thereupon the court overruled the said objection; to which ruling of the court counsel for defendant then and there duly excepted.)

And thereupon counsel for the plaintiff read to the jury the statute of the State of Indiana, which, omitting the preliminary requirements of the statute as to residence, etc., states the causes or grounds on which divorce may be granted, as follows (Pr. Rec. p. 117; orig., p. 195):

First. Adultery, except as hereinafter provided.

Second. Impotency, existing at the time of marriage.

Third. Abandonment for two years.

Fourth. Cruel and inhuman treatment of either party by the other.

Fifth. Habitual drunkenness of either party.

Sixth. Failure of the husband to make reasonable provisions for his family for a period of two years.

Seventh. The conviction, subsequent to the marriage, in any country, of either party of an infamous crime.

The admission in evidence of this statute of Indiana against the objection of defendant's counsel, was an error equally as prejudicial to the defendant as the admission of the proceedings concerning the divorce.

The object which counsel for plaintiff had in desiring the introduction of this statute in evidence is apparent from their statement following the remarks of the court when the offer was made. Plaintiff's counsel wished to show to the jury that in the State of Indiana there were certain enumerated causes for which husband and wife could be divorced, and then by excluding from that list of causes those not named in plaintiff's complaint for divorce, leave it to be inferred by the jury that the cause for which the divorce was granted was adultery. It could not have been for desertion, as Mr. Aldrich said, for the reason that Mr. Waldron had only been away a year, while the necessary period under the statute for desertion as well as non-support was two years. The divorce could be granted for cruelty, but Mr. Aldrich desired the jury to know that the Waldron divorce was not granted on that ground, and so stated, and not having been granted for either the second,

third, fourth, fifth, sixth nor seventh cause, must necessarily have been granted for the first. This cause, adultery, would necessarily involve Mr. Waldron, the defendant in the divorce, with some woman, and the defendant, then Mrs. Alexander, having been mentioned in the complaint for divorce the natural inference which the jury would get from the statement of plaintiff's counsel in connection with the causes for divorce, as read from the statute, was that the defendant, then Mrs. Alexander, was implicated with Mr. Waldron, as set forth in *the complaint for divorce*, and that her association with him was therefore of such a nature as to *alienate his affections from the plaintiff*.

Counsel for plaintiff wanted the statute of Indiana as to divorce, in evidence with the record of divorce to sustain the charge of debauching alleged in the declaration.

It will be noticed by reference to the charging part of the complaint for divorce (Pr. Rec., 111; original, 188), that the complainant, plaintiff in this case, charged the defendant in the complaint with "cruel and inhuman treatment in that he had "become enamored of one Josephine P. Alexander," etc., and that while he had refused to live with her, the plaintiff, yet she expressly limits that time to one year, while for non-support two years must have elapsed.

The decree (Pr. Rec., 115; original, 192) states "that the "plaintiff is entitled to divorce from the defendant on account "of his misconduct *as charged in the complaint herein*," and "the "complaint herein" not making any charge of cruelty against Waldron, except as it consisted in his relations with the defendant, of course left it plainly to the jury to conclude that the relations which existed between the defendant and Waldron were just such as counsel for plaintiff desired to have the jury understand and believe; and it was for this reason that the In-

diana statute as to divorce was offered in evidence. When the offer was made, the court very properly said (Pr. Rec., 116; original, 193):

"The court takes judicial notice of the statutes of Indiana. The jury will take the record as conclusive evidence of the divorce; I do not see what more you want."

Had the court adhered to this ruling, it would have saved this error, and avoided bringing before the jury matter which, as Mr. Justice Miller said in the case above cited, *could not but have a prejudicial effect against the defendant with the jury in estimating the damages found by their verdict.* What the court said next, after the remarks above quoted seems to us no justification for its change in the ruling. The language is (Pr. Rec., p. 116):

"He may introduce the statute of Indiana to show what the law of divorce is."

We see no reason why plaintiff's counsel might show what the divorce law of Indiana was or why it was any more relevant or material in this case than it would be to have shown what was the divorce law of every state and territory in the United States. The admission in evidence of this statute was another error, in itself, sufficient to call for a reversal of the case. We close the discussion on this point by quoting from the closing argument of Mr. Dexter, one of counsel for plaintiff below, embodied in bill of exceptions (Pr. Rec., p. 267, 268), because it is directly connected with the manifest object which plaintiff's counsel had in urging the admission in evidence of the said statute. (Pr. Rec., p. 267):

Mr. Dexter (to the jury): "What was charged in the bill? That Waldron has for more than a year past been guilty of cruel and inhuman treatment of this plaintiff. In what? That he inflicted personal violence? He swears he did not He did not inflict personal violence. Now mark it, the next clause is: 'in this, that he has become enamored of one Josephine P. Alexander.' That is in the bill and that has been

read to you. Webster says 'enamored' means inflamed with love. Their story is that he was enamored of her and she not of him, but the result shows she married him. There could not have been any divorce on the ground of abandonment; two years had not elapsed; no cruelty, for it is sworn that there was none. Now, where did this suggestion come from? That is in the complaint; that is to be found in the divorce proceedings that they put on foot. Did Davie dream it? * * * Further, the bill alleges that he refuses, and for the last year has refused, to return to his home or to this plaintiff, and also refuses to provide for the plaintiff's support, but, on the contrary, has absolutely refused so to do, giving orders to his agents to do nothing for the support of the plaintiff, and threatens by his agents to do nothing for the support of the plaintiff, to take and carry away all the household goods and drive her from their home; that she has remonstrated with him in regard to his course, but was only met by scorn and rebuff, and that the plaintiff charges and believes it to be true that the defendant's sole and only purpose for so doing is induced by his attachment to said Josephine. * * * The plaintiff prays for decree of divorce for misconduct of the defendant on account of his cruel and inhuman treatment of this plaintiff, —neither cruel nor inhuman treatment proven, save in the language of the bill, 'in this, that he has become enamored by one Josephine P. Alexander, a married woman.'

"A husband and father can come and promote an intimacy *with another woman to the point of alleging that he is enamored of her, to the point of alleging that he is inflamed with love for her*, and she consenting thereto as the evidence in the case shows, and can go on and get their divorce, and the divorce thus obtained being secured, he can lead her to the altar, and this you call sustaining the sacredness of marriage."

Defendant's counsel objected to this part of Mr. Dexter's argument, when he introduced the subject of divorce. (Pr. Rec., 267; Original, page 459.)

This argument was based on the very testimony which defendant's counsel contended should have been kept out of the record, to prevent plaintiff's counsel from referring to the said record of divorce and the

statute of divorce, for the purpose of inflaming the passions of the jury against the defendant. It made the admission of this record and the statute erroneous in a twofold sense: *first*, on account of the effect which its *admission and the reading of it* had upon the jury; and, *second*, the effect produced upon the minds of the jury prejudicial to the defendant, by the argument of counsel in which he referred to the said record and the statute as a *basis for his assertions*. And the prediction made by counsel for defendant that said record and statute, if admitted, would be made the subject of argument to the jury by counsel for plaintiff was in all respects verified.

We will now consider as briefly as possible the objections made by counsel for defendant to the testimony of the plaintiff on the ground that she was the former wife of E. H. Waldron, said objections being based on the statute of the State of Illinois with reference to the testimony of husband and wife. The objection of counsel for defendant, in the first instance, was to her testifying at all as to an interview which she had with said Waldron in Chicago in the early part of 1886, when, as stated by plaintiff, she called to see him at the Beaurivage Flats. The question by counsel for plaintiff to plaintiff was:

Q. What was the purpose of your visit? (Referring to her visit to Chicago at the time above stated.) (Pr. Rec., 68; original, 122.)

(Question objected to by counsel for defendant; objection overruled. To which ruling defendant's counsel excepted.)

A. To see and talk with my husband, as any wife would visit her husband.

The COURT: I think she may state what she came here for.

Mr. WALKER (for defendant): It seems to me the witness herself should not be permitted to state her motive for calling upon her husband, who is not a party to this suit, nor do I see how it is competent at their instance to show what occurred between those two persons at that time, unless the defendant

was present. We can undoubtedly draw it out because the plaintiff was present. Now the plaintiff herself in support of her own case is permitted to state her motive in going to visit her husband, and follow it up by showing what the conversation was that occurred between them and what was done between herself and husband not in the presence of the defendant at all.

The COURT: I think that would limit the testimony too closely in this kind of a case. * * * Of course her motive may not be very material, but it is a fact within her knowledge what her intentions were. * * * I think she may state what she came there for.

Mr. WALKER (Pr. Rec., 69): I wish to state another objection. At the time this occurred the plaintiff and Mr. Waldron were husband and wife, and I know of no rule which permits of any conversation between husband and wife to go to a jury in a litigation between themselves and others. On behalf of the defendant we object to all evidence of the witness of transactions or conversations of the witness with her husband, offered in her own behalf.

Mr. ALDRICH: The application of that rule is specially denied in this kind of a case.

The COURT: That is altogether a more important and doubtful question than this, and I anticipate questions of this kind may arise on both sides of this case. I will hear arguments or authorities on this point. Both the laws of the state and the laws of Congress make her a witness in her own behalf, and how far that overrules the other principle that the disclosures of conversation between husband and wife cannot be made by one of the parties after divorce or death of the other, is a question that perhaps the court will have to determine. If you are not prepared to present that question the court will rule upon it.

Mr. WALKER: I make the point now; I don't care at this time to present any authorities; if counsel says that is the law I will accept their statement of it.

Mr. Aldrich here referred to the statute of Illinois on this subject which is as follows:

Paragraph 5. Husband—wife. Sec. 5. No husband or wife shall, by virtue of section 1 of this Act, be rendered competent to testify for or against each other as to any transaction of conversation occurring during the marriage, whether

called as a witness during the existence of the marriage, or after its dissolution, except in cases where the wife would, if unmarried, be plaintiff or defendant, or where the cause of action grows out of a personal wrong or injury done by one to the other, or grows out of the neglect of the husband to furnish the wife with a suitable support; and in cases where the litigation shall be concerning the separate property of the wife, and suits for divorce; and except also in actions upon policies of insurance of property, so far as relates to the amount and value of the property alleged to be injured or destroyed, or in action against carriers, so far as relates to the loss of property and the amount and value thereof, or in all matters of business transactions where the transaction was had and conducted by such married woman as the agent of her husband, in all of which cases the husband and wife may testify for or against each other, in the same manner as other parties may, under the provisions of this Act.

Provided, that nothing in this section contained shall be construed to authorize or permit any such husband or wife to testify to any admissions or conversations of the other, whether made by him to her, or by her to him, or by either to third persons, except in suits or causes between such husband and wife.

Mr. ALDRICH: Our Supreme court has held that an action for slander or malicious prosecution, or an action of this kind is separate property and makes a wife competent to testify to all transactions.

The COURT: There is no doubt of that.

Mr. ALDRICH: And they have also held that it is part of the *res gestæ*, and she is a competent witness in her own behalf on that subject.

The COURT: * * * It is rather a complicated question, still I will admit the testimony, and if there is any authority presented afterwards, we can have further arguments on it.

Mr. WALKER: I shall insist if the evidence is admitted no argument shall be made hereafter; the evidence is to stand. I think it sometimes works a great injustice to admit evidence, and then attempt to withdraw it from the jury.

The COURT: No doubt about it, but you are not prepared to argue the question now. You have not the authority to present.

Mr. WALKER: I am not going to contest the question; let

it be established if counsel are willing in this case, that all conversation between husband and wife may be shown occurring at any time.

Mr. ALDRICH: We have not announced any such rule as that. You are crossing another bridge.

Mr. WALKER: Not at all; I am contending for one principle. Afterwards, if we undertake to introduce evidence of conversations between husband and wife, then you should not object to those conversations. You can accept either horn of the dilemma you choose. We are entirely willing that all conversations between the parties shall go to the jury, so far as either one may bring them up, subject, of course, to the ordinary rule of evidence that the plaintiff cannot in her own behalf state a conversation between herself and a third person, who is a competent witness, in the absence of the defendant.

Mr. ALDRICH: We are willing it shall all go to the jury. You may go on.

The COURT: The court has already ruled on it; we will take the testimony. Don't state the conversation with anybody, either your husband or anybody else.

(Witness resumes): I came to visit my husband; I met him at the Beaurivage Flats in the presence of Mr. Waldron's brother and his wife, and also, I think, Henry Kirtland. I saw my husband; he received me very unkindly; his unkindness almost crushed me. I don't remember what I did do, all; I was hardly conscious of my condition. I was sick there between two and three days and nights. The first I realized was my son standing over me, and later the lady who kept the flat. When I came to myself I don't think Mr. Waldron was present. He never after that returned to me at LaFayette. Afterwards he wrote a letter to me requesting me to get a divorce, and Judge Coffroth came to me and asked me.

Q. Mrs. Waldron, at the time of adjournment you were describing what occurred at the Beaurivage flats and your condition; you may state how that was brought about.

A. By a shock which I received by the announcement by my husband.

Q. You cannot tell what he said. What did you learn at that time? State the facts—what you learned.

A. That he never intended to return to his home.

Q. State whether or not that was the first time you had learned that fact?

A. It was.

Q. How soon did you return to LaFayette?

A. I think it was the third day after that, as soon as I was recovered enough to return home.

The COURT: You conceded, I understand, that the statements of Mr. Waldron to the plaintiff are not evidence in the case to show the estrangement?

Mr. ALDRICH: There is authority, your Honor, that anything that took place under those circumstances, statements and communications between them, are evidence, and that she is permitted to testify to it.

The COURT: I cannot see why the fact cannot be proven by his statement as well as by his conduct.

Mr. ALDRICH: I have examined the question, and do not choose to risk it under the Illinois statute.

Mr. WALKER: I do not wish to be committed to any ruling of the court now without a thorough understanding. I am objecting to the evidence of the witness as to conversations that occurred between herself and her husband, offered in her own behalf. Upon a cross-examination, or in making out of our case we shall claim it is perfectly competent to prove any statement or admission made by the plaintiff whether to her husband or to any other person.

On page 75 printed record, original 133, the following question was asked by counsel for plaintiff:

Q. You may state the circumstances under which you procured that divorce?

(Objected to by counsel for defendant as incompetent, irrelevant and immaterial.)

The COURT: The question is general, but she may state anything relevant to the issue.

Q. You may state what induced you to get the divorce?

(Objected to by counsel for defendant as being incompetent, irrelevant and immaterial.)

The COURT: If there is anything on the part of Mr. Waldron that induced you—anything in connection with him, if it was at his solicitation or instance you can state that fact.

Mr. WALKER: Relative to this whole matter pertaining to the divorce, what we claim is this: that the defendant should not be prejudiced at all by the actions of either party to the divorce proceedings in Indiana, unless they connect her in some way with the proceedings; she could not control it, and it does not appear that she was there or had any knowledge of it."

After further remarks by the court and counsel, printed record, pp. 75 and 76, the court ruled that the above question might be answered, to which defendant's counsel duly excepted.

We think the objection to this last question was well taken, and should have been sustained by the court. The answer of the plaintiff to one of Mr. Aldrich's questions asked under this ruling of the court, (Pr. Rec., p. 77, original, p. 136) proves the objection to have been well taken. Plaintiff's answer beginning at the bottom of page 76, printed record, is as follows:

"It was first persuasion, inducements of different kinds. He offered me a certain portion of the property or all, and money besides. I did not consent to get a divorce from him, then he threatened me."

Mr. ALDRICH: I'll ask you whether threats were made?

A. Yes, sir.

Q. You may state who paid for getting the divorce?

A. I suppose he did.

(Counsel for defendant objected to the answer, and moved to have it stricken out.)

These questions and answers followed the ruling of the court above stated, that the plaintiff might state what induced her to get the divorce.

The objection, on principle, to the above answers and questions is that the defendant was not responsible and was in no way connected under the evidence in the case with threats on the part of Waldron made to his wife in their conversation concerning the divorce. It was irrelevant testimony, because it did not tend to prove that the defendant alienated the affections of said Waldron from the plaintiff.

Mr. Walker, for the defendant, began cross-examination of plaintiff (Pr. Rec., 77; original 136), and on page 85, printed record, original 148, after the plaintiff had at considerable

length related what had taken place at the time she had the said interview with her husband, and that at her second visit she had asked him to return to his home, Mr. Walker asked the following question:

"Q. What answer did he give you?

(Which question was objected to by counsel for plaintiff as incompetent.)

The COURT: There is a question as to the propriety of the evidence, if it came through the right quarter; whether she is permitted to make a disclosure of that kind as to matters transpiring between herself and her then husband, I don't know.

Mr. WALKER (for the defendant): She has already made a disclosure of what occurred at the Beaurivage flats.

Mr. ALDRICH: But not a word of conversation.

Mr. WALKER: When they have proved the condition of the plaintiff's feelings—that she was prostrated at the time; that she was shocked at the time by what her husband said and did, and particularly was shocked because he was not going to return to LaFayette, I would like to inquire what was said, for the purpose of letting the jury know what occurred at the time, and whether a sufficient cause was given for her prostration. They are matters which you can't prove except by conversation. They do not consist of overt acts at all, no blows are passed, no violence used, nothing except temperate language, not only from one but both, and you can get at the state of feelings from what the lips say rather than from what the hands may do. * * * We are not permitted to show by plaintiff's own evidence that years before this action was brought or thought of, her husband deserted his home and went to another home to live and gave at that time as his reasons, and more than that, at that time assured her that he never would under any circumstances return to his home. Now we can't prove the fact except from the language.

The COURT: The law seems absurd to exclude the testimony, but I don't know but it is within the rule. Can't you agree in setting aside all those hair splitting distinctions as to when and when not a husband or wife may testify, and let them both tell their story.

Mr. DEXTER (for plaintiff): The court above might not agree with us.

The COURT: But you can agree to waive it.

Mr. ALDRICH (for plaintiff): We take the position that a husband of the character this one has shown himself to be, we don't want to hear at all.

The COURT: * * * I think these parties ought to be allowed in a suit of this kind after divorce and marriage to another woman, and in prosecution of this character, to tell their story. I think it is absurd, whether it is the law or not, to shut out some testimony of the wife and some testimony of a husband on account of their former relations; that is my judgment of it outside of any technical question of what the statute may be; the law allows her to be a plaintiff in her own behalf; she is a party to the suit and can testify. The laws of the state and the laws of Congress allow it expressly. It is splitting hairs and a good deal of trouble to find out how far under the statute they ought to be permitted to go to testify under the permission which the laws of the state and congress give. I would be glad if you would agree on something."

Again (Pr. Rec., 88), the court said, after reading the statute:

"If this statute is the law, I do not see how conversations can be admitted, but I suppose actual transactions may be given in evidence. We have got to that point where it seems the jury ought to know just what was said and done, but the statute excludes it. It is very hard to do exact justice under such circumstances, but if that is the law that is all there is about it.

Mr. WALKER: Q. Well, Mrs. Waldron, what did you say to your husband, then?

(Objected to by counsel for plaintiff; objection sustained by the court, to which ruling of the court, counsel for defendant then and there excepted.)

Q. I will now ask you if you were not told by your husband, Mr. Waldron, at that time, in his room, that he never would return to live with you again?

(Objected to by counsel for plaintiff; objection sustained. To which ruling of the court, counsel for defendant duly excepted.)

(Witness resumes): * * * He gave some reasons why he would not return; very unsubstantial ones, though; I urged him to return, and thought it would be better for all of us; that was the reason I gave.

Q. Mrs. Waldron, at that time and in that discussion, was not the argument you used that in the interest of your son, if for no other reason, he should return home?

(Objected to by counsel for defendant; objection sustained. To which ruling of the court, counsel for defendant then and there duly excepted.)

On page 92, printed record, original, 160, plaintiff, on cross-examination, stated as follows: * * * "The first time I came to Chicago after my husband left me was in July; that was at the time I met him at the Beaurivage, and Mr. and Mrs. Emory Waldron were present at that interview. I went to their house and took tea with them before I went there, and they accompanied me to my husband's office. Mr. and Mrs. Emory Waldron were with me most of that day, and that was in the evening, and this day they were sent for by my husband to accompany me."

"I think that interview down there lasted pretty much all that night; part of that interview was false accusations of me. I did not go there for the purpose of setting myself right against these false accusations. I didn't go there with anything but peace and love in my heart to visit my husband. I did not at that time know that he was away from home to stay. He had not informed me that he should not return home. I expected that he would return home; I was told then that he would not return, which caused the shock to me. I was shocked and prostrated, and was ill from the effects of it.

Q. Now, I ask you what he said and what occurred?

(Question objected to by counsel for plaintiff; objection sustained by the court. To which ruling of the court counsel for defendant then and there duly excepted.)

A. I could not tell what occurred without stating what was said, what the provocation was.

Q. Was the shock caused by what your husband said?

A. Yes, sir.

Q. Now, I ask you what was said?

(Objected to by counsel for plaintiff; objection sustained by the court, to which counsel for defendant then and there duly excepted.)

Witness resumes: The matter of division of property was not discussed at that time; he was in no condition to talk rationally that night, he had been drinking very hard; it was about seven o'clock in the evening, and I presume I did say

that evening that he was not in a condition to discuss business. He had been drinking very hard for ten days, so Mr. and Mrs. Waldron said, and they said he was not in a condition to conduct business; conveyance of property was not talked of that night, and the offer was not made to convey to me all the property in LaFayette in trust for my son.

Q. Did you not say that you would not accept a conveyance of that kind, but it must be made absolutely to you?

(Objected to by counsel for plaintiff as going into the conversation.)

The COURT: Ask her what the subject of the conversation was, and not what was said.

(And said objection was sustained by the court; to which ruling counsel for defendant then and there excepted.)

Q. That discussion was kept up the greater part of the night?

A. (Pr. Rec., 94; original, 161.) His abuse of me was.

Q. What abuse was it?

(Objected to by counsel for plaintiff; objection sustained by the court; to which ruling, defendant's counsel excepted.)

A. He didn't whip me, but I would rather he would.

Q. What did the abuse consist of?

A. Accusations.

Q. What were the accusations?

(Objected to by counsel for plaintiff.)

The COURT: The question is whether or not it is calling for conversation between husband and wife. I think she may state the nature of the charges that were made, but not give the conversation.

(Objection sustained; exception by counsel for defendant.)

On page 99, printed record, original, 168, 169, the following question was asked plaintiff by Mr. Walker:

Q. What, if anything, did he say at that interview about returning home?

(Counsel for plaintiff objected to the question as incompetent under the statute.)

The COURT: I think you may show everything that was said on that occasion. If your rule is correct that this is something that can't be waived, you each have exceptions enough

on this point to reverse any judgment that may be rendered either way.

Q. I will ask you if Mr. Waldron did not at that time and in that interview say to you that he would not return to live with you again?

A. I think he did.

On page 100, printed record, appears the following:

Mr. DEXTER, for plaintiff: As Mr. Walker is through with his cross-examination on that point, let an order be entered that all of this testimony pertaining to that interview at the Beaurivage, both the direct and the cross-examination, be stricken out.

Mr. WALKER, for the defendant: We shall object to that; we want the objection preserved in the record and our exception; if any of the evidence is to be stricken out it should be pointed out now, so there can be no question about it hereafter. It is very easy for counsel to indicate what evidence they want stricken out.

The COURT: I think I will permit that order to be entered, striking out all the testimony as to conversations between the plaintiff and her husband on that occasion when she came to see him at Chicago, and when she says she was shocked at learning he never intended to come to live with his family in LaFayette.

(To which ruling of the court counsel for defendant then and there duly excepted.)

We have here set forth, at considerable length, substantially all the proceedings shown in the record touching the testimony of the plaintiff in regard to the subject-matter of the occurrence at the Beaurivage Flats, between herself and her husband, Edward H. Waldron, in order to show the force of the objection made by counsel for defendant to the plaintiff testifying at all unless defendant's counsel were to be permitted on the cross-examination to draw out the actual conversations *referred to on her direct examination.* Counsel for defendant was willing, as he stated (Pr. Rec., 70; original, p. 125), to have *all* the conversation that took place at the Beaurivage flats between plaintiff and her husband brought before the

jury. But, on the other hand, if the court were not going to permit *a full statement of the conversation*, then counsel for defendant objected to the plaintiff making any reference whatever to the occurrence between herself and husband at the Beaurivage flats. The court ruled against defendant's counsel on this point, and permitted plaintiff, on her direct examination, as above set forth, to state that certain things occurred at the interview; that she was very much affected by what occurred; that she was prostrated in consequence of it; that she suffered much abuse from her husband at that interview—abuse, from her own statements, confined to words, and not personal violence, and yet counsel for defendant was not permitted to cross-examine her on these points. There were many things stated by the plaintiff while on the witness-stand which had the effect of placing her before the jury as a much injured person, and had a tendency to excite the sympathies of the jury in her behalf, and by reflecting upon her husband, necessarily inclined the jury to a feeling of prejudice against the defendant in the case, if for no other reason than simply because Waldron had afterwards become her husband. It was competent for counsel for defendant to cross-examine the plaintiff at length upon what had been touched upon in her direct examination with reference to the occurrence at the Beaurivage flats, in order to show by her own admissions, if she would admit it, that the cause of her prostration and the shock which she stated she had received on the visit to her husband was caused by his statement to her that he had left his former home and intended to remain away and never to live with her again, and that he gave *as his reasons therefor*, that they had for years lived unhappily, that he had left her once before and remained away several months; that their daily life was becoming more and more unpleasant and unhappy; that he had long since lost his affection for her, and

that there was no prospect of his ever being reconciled to live with her again, and that under no circumstances would he do so; and if, on cross-examination, these admissions as to the conversation with her husband were not made by the plaintiff, then a foundation would have been laid by counsel for defendant for examining Edward H. Waldron as to the conversation and all that occurred at the said interview with the plaintiff, at the time referred to by her in her direct examination. It was necessary and competent for the defendant to bring before the jury all that occurred and was said and done at that conversation in the Beaurivage flats between plaintiff and her husband, in order to remove from the minds of the jury any impression which they may have received, on account of plaintiff's statements on her direct examination, *that the defendant was in any way responsible for the actions or the statements of plaintiff's husband on that occasion*; and in order to so remove that impression from the minds of the jury it was competent for the defendant to show, by the admissions of plaintiff on cross-examination as to conversations, that *the defendant was in no way responsible for the refusal of Waldron on that occasion to return to the home of plaintiff:* and by showing that the reasons given by Waldron in that conversation for his determination to never return to live with plaintiff, were reasons which were *entirely disconnected from the defendant* and were entirely apart from *any influence of hers.*

It was not proper to leave it to the jury to indulge in any presumptions as to the causes that induced Waldron to separate from his wife. The defendant was not to be found guilty of the charges in the declaration except as they were proven by evidence bearing directly upon the issues; and when the matter of meeting between plaintiff and her husband at the Beaurivage flats was referred to in the trial of the case, all the facts connected with that interview should have been

brought out in order to furnish the jury with a proper foundation on which to base their conclusions as to whether anything that Waldron said or did at that interview was due to *or had been occasioned by the influence or conduct, enticement or allurement of the defendant.* But as the counsel for plaintiff desired to limit the examination of the plaintiff, and as the court ruled it should be limited, it was left to the jury to *draw their their own inferences, regardless of facts*, as to what actuated Waldron in giving his wife to understand at that interview that he would never return to live with her.

While it is true that the court on motion of plaintiff's counsel ordered that all that had been stated as to conversation between plaintiff and her husband at the Beaurivage flats should be stricken out, yet we do not regard that as by any means rectifying the error of the court in its former rulings on that question.

Mr. Walker (Pr. Rec., 69; original, 124) when the question of the admission of this evidence was under discussion, made this statement:

"I shall insist if the evidence is admitted, no argument shall be made hereafter. The evidence is to stand. I think it sometimes works a great injustice to admit evidence and then attempt to withdraw it from the jury."

And he further stated in that same connection (Pr. Rec., 70) as follows:

"I am not going to contest the question. Let it be established if counsel are willing in this case, that any conversation between husband and wife may be shown occurring at any time."

Mr. Walker was willing that this rule should be adopted, or if it was not adopted, as he stated above, he objected to having certain testimony with regard to the interview brought before the jury subject to the order of the court afterwards, to strike it out.

We wish to urge further on this point that the plaintiff, by bringing this action, *made a distinct issue* as to what her marital relations with Waldron were. She invited a *full investigation* of those relations; an investigation which involved all that had been said and done between herself and Waldron, touching the *character* of their consortium. And anything said or done by one to the other was material in that behalf, *just as it would have been material in a divorce suit between them.* How they lived, whether happily or unhappily; whether there was affection between them; whether there was affection which she was deprived of by separation from Waldron, were questions which could not, in any other way, be so well answered as by showing what they said to each other in conversations *concerning such separation.*

It was admitted by plaintiff that they had had such conversations. Then why not admit them in evidence? The plaintiff in such a case as this should not be permitted to present an issue and at the same time exclude the evidence which best tended to prove it.

The points, then, which we urge as error in connection with the foregoing proceedings, touching the testimony of the plaintiff, are as follows:

1. In permitting plaintiff to state in her direct examination what took place at the said interview with her husband, and then in refusing to permit counsel for defendant to cross-examine as to such matters.

2. In sustaining the motion of plaintiff's counsel to strike out all of the matter pertaining to conversations in said interview, without requiring counsel for plaintiff to specify particularly parts of said testimony which they desired stricken out, thus leaving said testimony before the jury with practically the same force and effect as if no order to strike out had been entered.

3. That where a wife brings an action concerning her separate property in connection with circumstances such as existed in this case, the statute as to husband and wife testifying for or against each other, has no application. The following authorities are in point here:

Schouler's Domestic Relations, 4th Ed., Sec. 53, says:

"On the whole, the prevailing tendency of late years in both England and America, is to regard domestic confidence or the bias of a spouse as of less consequence as compared with the public convenience of extending the means of ascertaining the truth in all cases; such facilicies being increased, it is believed, by hearing whatever each one has to say, and then making due allowance for circumstances affecting each one's credibility."

In 1st Greenleaf, Sec. 254, it is stated:

"Communications between husband and wife are not excluded on the ground of their common interest, or for the protection of others against whom they may testify, but because public policy requires they shall not be allowed to *betray the trust and confidence which are essential to the marriage state.*"

In this case there was not only no confidence and trust to be betrayed between Waldron and the plaintiff, but they were not at the time of the trial of this suit in the marital state.

The above quotation from Greenleaf appears in the opinion of the court in *Sessions* v. *Trevitt*, 39 Ohio, 259, where the court says:

"The reason of the exclusion ceases when the husband and wife conclusively show, by making the communication in the known presence of a third person competent to be a witness, that it is not of a confidential nature, and that its disclosure cannot violate any trust or confidence."

In Robb's Appeal, 98 Pa. St., 501, where the widow was permitted to testify in a suit to establish a claim against husband's estate, the court says:

"It is contended, on the ground of public policy, the widow was incompetent to testify to the contract, that the disqualifi-

cations incident to coverture continued after the death of the husband, and is not limited to what occurred in their confidential intercourse, but extends to all facts and transactions which came to her knowledge during their married relations. While the principle thus broadly stated has sometimes been recognized, the better and more generally received opinion is, that the disqualification is restricted to communications of a confidential nature, and does not embrace ordinary business transactions and conversations in which others have participated."

It is in evidence in this case by the plaintiff, that at the time of her interview with Edward H. Waldron at the Beaurivage flats, there were also present Mr. and Mrs. Emory Waldron. (Pr. Rec., 92; original, 159, 160.)

Not only this, but it was plainly evident to the court that there was nothing of a confidential nature talked about between plaintiff and Waldron at that time, and there was certainly no "trust and confidence essential to the happiness of "the married state" which could have been betrayed.

Furthermore, at the time when plaintiff was testifying, she had ceased to be the wife of Edward H. Waldron, and the question of the admissibility of her testimony would clearly come within the application of the rule laid down in Robb's Appeal, *supra*.

In *French* v. *Ware*, 26 Atlantic Rep., 1096, the question was presented to the Supreme court of Vermont, how far a former wife, after having obtained a divorce, can be allowed to testify against her former husband in regard to matters occurring during their married life. The state has no statute upon the subject and the question arose under the common law. The court was of opinion that the cases made no distinction between the competency of the widow and of the divorced wife to testify to transactions occurring during the married life and that no substantial reason occurs for making such a distinction. The relation of husband and wife is at an

end in both cases. Public policy has to do in withholding only such matters as would be likely to invade and *disturb the confidence and domestic harmony* of the marital relation.

In Wharton on Evidence, Vol. 1, Sec. 423, edition 1879, the rule is laid down that even at common law the wife in certain specified instances could be a witness for her husband, as in the case of the necessity of proving the contents of his lost trunk in an action against the carrier. Citing:

McGill v. *Rowan*, 3d Penn. St., 451.
Illinois R. R. v. *Taylor*, 24 Ill., 323.
Sasseen v. *Clark*, 37 Ga., 242.

And further, WHARTON says (Sec. 429):

"Where the relationship has ceased by death or by divorce, the wife may be admitted for or against the former husband, or his representatives, though she is precluded from testifying as to information derived confidentially during marital intercourse. *It is otherwise as to non-confidential information.*"

We think that in this case the court was not bound to be controlled by the Illinois statute on this subject. The circumstances of the case, the fact that the plaintiff in the suit was divorced, that she did not claim nor did her counsel claim that the matters discussed with Waldron at the Beaurivage flats were *confidential matters;* that she was prosecuting a suit *in which it was material*, if referred to at all on the trial, that all that took place between her and Waldron should be presented to the jury, and that no injury to *domestic happiness* could result from admitting such testimony, make a case where, under the rulings of the decisions above cited, and the authorities referred to, the statutes of the State of Illinois on that subject had no application.

In excluding the testimony of Edward H. Waldron, a witness called on behalf of the defendant, the court made the same ruling as it did concerning the testimony of the plaintiff,

with reference to conversations between them. (Pr. Rec., 155, original 264.) To which ruling counsel for defendant then and there excepted.

We contend the same reasoning applies against the exclusion of evidence of said Waldron as to conversations with plaintiff, as were applied to the plaintiff, and that it was error in the court prejudicial to the defendant not to permit Waldron to state any conversation that had occurred between him and the plaintiff touching the character of their domestic relations.

Witness Waldron had testified in regard to an accident which happened to him in LaFayette in 1885, and among other things, said:

"During the time I was suffering from that accident the life between us was not of a pleasant character. Complaints were made by the plaintiff of me all the time, whisky and women and inattention to home and inattention to her. She said I had a private car." (Pr. Rec., 161, original 275.)

(Answer objected to by counsel for plaintiff.)

The COURT: You can't tell what she said.

(To which ruling counsel for defendant then and there excepted.)

In not permitting Mr. Waldron to state what plaintiff said in her complaints against him, the court deprived defendant of evidence which was material as showing that long before this action was begun no affection had existed between plaintiff and her husband. And the question whether, at the time of the alleged alienation of his affections, there was, in fact, any affection between them was one of the issues in the case to be proved or dispsoved.

Dance v. *McBride*, 43 Iowa, 624.

Coleman v. *White*, 43 Ind., 429, citing Sedg. on Damages, 547.

Gilchrist v. *Bale*, 8 Watts, 355.

Palmer v. *Crook*, 7 Gray, 418.
1st Greenleaf Evidence, 117, Sec. 102.
2 Hilliard Torts, 509.
Addison Torts, 899.

To the same effect is

Harter v. *Crill*, 33 Barbour Rep., 282.

These cases all hold that evidence as to the relations between the husband and wife as to whether there was any affection between them or whether they lived happily or unhappily, is always competent and material in mitigation of damages.

And if the court erred in excluding the testimony of Waldron as to what was said and done between him and plaintiff touching the character of their marital relations, then it was an error extremely prejudicial to the defendant in influencing the verdict, and also the amount of the verdict against the defendant.

Another error in the admission of evidence which we will briefly consider is the testimony offered by counsel for plaintiff, of A. Orth Behm, being his deposition (Pr. Rec., 253, original 436), the offer was as follows:

"Thereupon counsel for plaintiff offered in evidence parts of the deposition of A. Orth Behm.

(Counsel for defendant objected to said testimony for the reason that the deposition had been suppressed by order of the court, and for the further reason that the evidence was irrelevant and not proper rebuttal to any evidence brought out by the defendant. Which objection was overruled by the court. To which ruling of the court counsel for defendant then and there duly excepted.)"

Whereupon counsel read certain parts of said deposition (Pr. Rec., 253, original, 437), and then from said deposition read the following question (Pr. Rec., 254, original, 438):

Q. You may state who were the moving parties in those negotiations preceding the filing of the bill for divorce?

(Which question was objected to by counsel for defendant. Objection overruled by the court; exception to the ruling by counsel for defendant.)

A. Well, I could only say that Mr. Davie seemed to be the moving party. I never saw Mr. Waldron, never had a letter from him at all after the divorce was granted, and never had a consultation with him. I had conversations with Mrs. Waldron.

Q. State whether she was anxious for a divorce, or otherwise?

(To which question counsel for defendant objected. The court overruled the objection; to which ruling of the court counsel for defendant then and there duly excepted.)

A. Well, she was not anxious for a divorce at any time.

Q. You may state whether she didn't express herself as hostile to the idea of getting a divorce?

(Same objection, ruling, and exception.)

A. I think she did the first time I was at the house.

Q. And at a number of subsequent interviews, wasn't she?

A. I don't know as I can put it that strong, but she never wanted a divorce, even up to the very last day it was granted.

(Counsel for defendant moved to strike out the last answer of the witness. Motion overruled by the court, and exception by defendant's counsel.)

Other parts of said deposition of Behm were read to the jury, reflecting seriously upon the moral character of Edward H. Waldron, and particularly stating that Waldron had left the plaintiff and was living with another woman. (Pr. Rec., 255; original, 440.) And then the following question was read from said deposition:

Q. I have forgotten to ask you about the testimony on the divorce proceeding—by whom was it furnished?

(Objected to by defendant's counsel. Objection overruled. Exception by defendant's counsel.)

And on page 256 printed record, original, page 441, the following question was read from said deposition:

Q. Don't you know that Col. Wilson told you at the time that if the divorce was granted Mr. Waldron's side would have to furnish the testimony?

(Question objected to by counsel for defendant. Objection overruled. Exception to the ruling by counsel for defendant.)

A. Well, I don't remember; he may have done that. I know he did.

Q. You know that Mr. Waldron's side did furnish the testimony?

(Question objected to by counsel for defendant. Objection overruled, and exception to the ruling.)

A. Yes, sir; Mr. Davie was the only witness that I know.

We contend that all of the foregoing questions were improper, irrelevant and prejudicial to the defendant, and also other parts of the said deposition which we have not here quoted fully, but which appear on page 255 printed record; original, 440.

The printed record, 12, original 24, shows that an order of court was entered suppressing the said deposition of A. Orth Behm and William C. Wilson. The deposition having been suppressed, was not evidence in the case, and besides that, it was error to admit the testimony of said Behm because it prejudiced defendant before the jury on account of the subject-matter of said testimony being the divorce which plaintiff had obtained from Waldron. The statement of Behm that plaintiff did not want to get the divorce, that she was opposed to it, that Waldron furnished the testimony, tended to impress the jury with the idea that the plaintiff had really not been a voluntary party to said divorce and therefore that it was to be inferred from Behm's testimony that Waldron was moved by his attachment to some other woman to induce plaintiff to secure the divorce, and it being in evidence that Waldron, a few months after the divorce was obtained, married the defendant, the jury would naturally

infer the marriage was the result of arrangements between the defendant and Waldron in which she had induced Waldron to separate from his wife, and if so, she, the defendant, was therefore guilty as charged in the declaration.

We respectfully urge that the same objection was well taken to the deposition of William C. Wilson, offered in evidence. (Pr. Rec., 243; original, 419.)

(Objection to offer by defendant's counsel; objection overruled; to which ruling counsel for defendant excepted.)

Portions of said deposition were then read to the jury, and on page 244, printed record, original 421, Wilson's testimony is as follows:

"A. Judge Larue (Larue being the judge who tried the divorce case in Indiana) told Mrs. Waldron that sufficient cause had been made to grant a divorce, but she seemed to be reluctant to have it. There seemed to be a hesitation, which she spoke of, in her own mind as to whether she could give up that womanly affection which she had for her husband or give up the property for her support. These two causes were before her mind. Quite a little chat was had there, and at first she declined entirely to have anything more to do with it. Judge Larue told her she might dismiss her case or have the decree; that he would not pass upon it that evening, and he told her to go home and think of it, and come back and let him know the next morning, which she did."

"Counsel for defendant thereupon moved to strike out the answer of the witness as entirely improper, irrelevant, incompetent and impertinent; which motion was overruled by the court; to which ruling of the court, counsel for the defendant then and there duly excepted."

This evidence was clearly inadmissible because it was going into the issues of the divorce case, and even farther than the inference which might have been conveyed to the jury by the introduction of the record of divorce itself. As far as it went it was a permission by the court to plaintiff to rehearse the issues and details of the divorce, which could serve no purpose ex-

cept to convey to the jury the impression that the plaintiff did not desire to have a divorce, and also to impress the jury with the belief that at that time she had a strong affection for her husband—either of which purposes was entirely irrelevant and improper.

We will next notice the error of the court in its ruling in admitting, over the objection of defendant's counsel, the following testimony (Pr. Rec., page 66, original 119, 120):

The PLAINTIFF: "Mr. Waldron left home to come to Chicago in June, 1886; he had been to Chicago very frequently before that time.

Q. Do you know if anybody sent for him?

A. I do.

Q. Mrs. Waldron, did you see any telegrams to Mr. Waldron from any person; if so, from whom?

A. I saw a telegram to him from she that was Mrs. E. S. Alexander.

Mr. WALKER, for defendant: We object to that and move to have the answer withdrawn. If I understand the witness, it is that she saw a message at LaFayette, a message received at LaFayette from the defendant, here, to plaintiff's husband. Now, I ask to have that answer withdrawn, in the first place, because it is stating a part of the contents of that message. More than that, if the message itself was here, it is but a copy; transmitting over the wires, and the contents of that message received cannot be proved by stating its contents unless it is admitted that the message was sent by the party whose name purports to be signed to the message when received by the company. Unless this be admitted or proved, the message received does not bind the defendant or the person whose name purports to be signed to the message received.

The COURT: I think the first objection is good, that they have not laid the foundation yet for introducing parol evidence of the contents of the message. You may be right about the second objection, that the message, if here, would not be admissible unless there was evidence showing that the message was signed by the person purporting to sign it.

Mr. ALDRICH, for plaintiff: We submit that is not the rule, your Honor.

The COURT: I do not know as it is, but it seems to me it ought to be.

Mr. ALDRICH: State whether you saw it.

A. I did.

Q. Where did you see it?

A. The first one I think I saw on our library table.

Q. I will ask you to state whether or not your husband left for Chicago immediately after that time.

A. He did, at least he said he was going.

Q. You must not tell what he said, he left home at that time?

A. Yes, sir, in response to a telegram; this first time he left was in December, 1885. He was gone about a week and then returned home and lived with me as my husband.

Q. How soon did he leave again?

A. Well, within the next ten days, I think.

Mr. WALKER: I ask to have all that stricken out that precedes any date laid in the declaration.

The COURT: No, I don't think we will strike it out.

Witness resumes: This time he left home I think was in the neighborhood of January 10, 1886; the next time after this Mr. Waldron went away was the very last of January or the first of February, 1886, I couldn't say exactly the date.

Q. State whether or not you saw any telegram at that time.

A. Yes, sir, I did.

Q. And from what person it purported to be?

Mr. WALKER, for defendant: I object to that.

The COURT: The objection is sustained. That is part of the telegram itself. (Pr. Rec., 67, 68, original page, 121.)

The last objection which the court sustained was made against the same evidence which, before that, the court, against the objection of the defendant, permitted the plaintiff to bring before the jury. The last objection was sustained because the question to plaintiff asking her from what person the last telegram which she saw purported to be, called for an answer as to the contents of the telegram. So did the first question call for an answer as to the contents of the first telegram, yet, the court, while admitting, in sustaining the second objection, that the question *was as to the contents of the telegram*, permitted the plaintiff to state the contents

of the first telegram by saying that it was from Mrs. Alexander, the defendant. The admission in evidence of the statements of plaintiff as to this telegram was error highly prejudicial to the defendant; it directly said to the jury that Mrs. Alexander, the defendant, had been in the habit of sending telegrams to plaintiff's husband at LaFayette, and by inference, in plaintiff's stating that he left LaFayette after receiving the first telegram, necessarily conveyed to the jury the impression that Mrs. Alexander had sent for Waldron to come to Chicago; *and there could have been nothing more prejudicial to the defendant, and nothing that would have a more direct tendency to influence the jury in believing that the defendant was guilty of alienating the affections of plaintiff's husband than to have it stated to them that Mrs. Alexander was in the habit of telegraphing plaintiff's husband to come to Chicago.* We regard this as one of the most serious errors in the case. If plaintiff's counsel accomplished any legitimate purpose from this testimony, they did it by *improper means. The manner of proof* is as important as *the matter to be proved.*

The next error of the court that we shall consider is the tenth assignment which is that the court erred in charging the jury as follows (Pr. Rec., 291, original, 502):

"We know, as a matter of common observation, that, as a general rule, men woo and women are wooed and won; that men seduce and allure and lead women from the path of virtue, and that women are allured, seduced and led astray; but we also know, from common observation, that this general rule does not always hold, and that sometimes women woo men; that sometimes women allure, seduce and debauch men; that women upon occasions induce, allure and persuade men to abandon their wives and form new relations, lawful or unlawful. It will be for the jury to say from all the evidence what were the facts in this cause, and whether the issues stand proved or unproved."

The objections to this instruction are that it suggests to the jury that in arriving at their verdict in this case they had the right to appeal to their own judgment and common knowledge as to what were the habits, practices and inclinations of women as to inducing, alluring, persuading and debauching men; that it justified the jurors and each one of them in appealing to their or his personal experience and observation in those matters. It left them free to believe that because some woman, in some case which they may have known about from personal knowledge or from hearsay, at any time allured, seduced and debauched a man, and thereby enticed and won him away from his wife, and alienated his affections from her, it was quite probable that in this case the defendant had done the same with the husband of plaintiff.

The instruction as to what, according to our common knowledge women often do, was as improper as the admission of testimony on that point would have been, and even more so, because coming at the close of the trial, and from the court, it left an impression upon the jury which testimony in the course of the trial would not have done; yet it certainly could not be claimed under the most strained construction of the rules of evidence that it would have been proper on this trial to permit any witness or any number of witnesses to testify that according to their common observation and knowledge women sometimes and on occasions, induce, allure, seduce, debauch and persuade men to abandon, desert their wives and form new relations, lawful or unlawful. To the jury the instruction was equivalent to the testimony of the court as to his knowledge of what women sometimes did toward alienating men from their wives.

The instruction had no bearing upon evidence in the case or testimony offered. The mere statement of the instruction as given shows that fact.

The evidence at the close of the trial on the part of the plaintiff, was utterly insufficient to warrant a verdict for plaintiff. Nowhere in the whole record does there appear a word of communication from the defendant to said Waldron, oral or written, that could be construed into an effort on the part of the defendant to induce the said Waldron to leave the plaintiff. The record shows that for a long time prior to plaintiff's divorce from Waldron, for many years, there had been no affection between them; and it was a case where no instruction should have been given by the court except such as had direct application to the evidence and confined the attention of the jury thereto.

The attempt to incorporate into this instruction a saving clause by adding that "it will be for the jury to say from all "the evidence, what were the facts in this case, and whether "the issues stand proved or unproved," does not make the instruction any less improper. There was no evidence in the case, nor could any have been introduced touching "matters "of common knowledge." The duty of the jury was to find *from the evidence* whether the defendant was guilty as charged in the declaration, and they were bound to confine their attention to the consideration of facts *directly connected with the defendant.*

If there were no other errors in the record, this one error, we submit, is sufficient to require a reversal of the judgment.

The last assignment of error which we shall discuss is that the court erred in its instruction to the jury as to the measure of damages. (Pr. Rec., 281; orig., 482.) The last clause of this instruction, we think, was erroneous as given, because it contains no reference at all to the evidence in the case. It is distinct from the other part of the charge, both in statement and matter. It left the jury free to give punitory

damages at discretion, if they *believed* the injury was inflicted "wantonly and maliciously," regardless of whether the belief was founded on evidence in the case that the injury was wanton and malicious. Yet they had no right to a belief at all unless founded on evidence. Malicious acts may vary in degree. There may be much or little malice; and when resorted to in estimating damages, its existence must be established by proof.

This was a grave error in the case, and one that was highly prejudicial to the defendant.

The verdict was very large; it was excessive. And how much this excess was due to the free rein given by the court to the jury in permitting them to resort to abstract belief in estimating damages cannot be known.

Exception was taken to the giving of this instruction at the time. (Pr. Rec., 281; orig., 482.)

Our treatment of the errors which we have discussed has been as brief as their importance and significance would permit.

We have not discussed separately all that are assigned in the record, for the reason that we consider the ones italicized in the beginning of our brief of so grave a nature as to call for a reversal.

As we have elsewhere stated, the case was of such a character that the admission of evidence should have been governed strictly by the law. It was not a common case, but one in which the sympathies of the jury were easily aroused and their prejudices liable to be excited with slight cause, and nothing improper and misleading should have been brought before them with the sanction of the court, either in the way of testimony or by instructions.

The verdict was for a sum of money greater than the majority of persons accumulate in a life-time—a fortune in itself. The record in this case is not such, in our opinion, as to justify the taking of this sum from the plaintiff in error, and we therefore ask that the judgment be reversed.

Respectfully submitted.

WILLIAM H. BARNUM,
Attorney for Plaintiff in Error.

H. J. CALDWELL,
LOUIS J. PIERSON,
Of Counsel.

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JAMES H. McKENN
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

TERM NO. ~~388~~ 97 CAUSE NO. 14,504.

JOSEPHINE P. WALDRON,
Plaintiff in Error,
vs.
MARY A. WALDRON,
Defendant in Error.

Error to the Circuit Court of the United States, for the Northern District of Illinois.

BRIEF FOR DEFENDANT IN ERROR.

CHARLES H. ALDRICH,
COUNSEL FOR MARY A. WALDRON.

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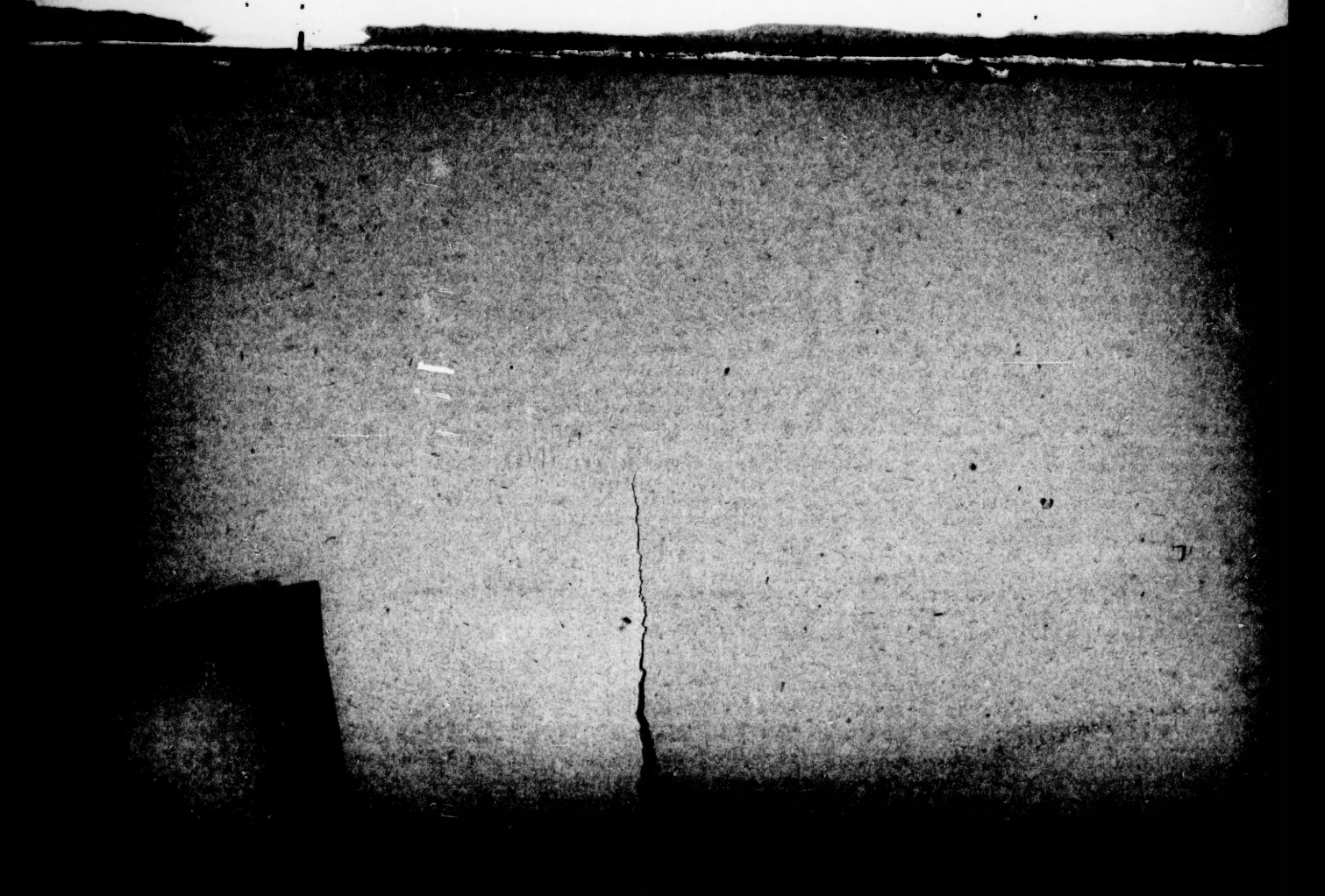

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM NO. 398. **CAUSE NO. 14,504.**

JOSEPHINE P. WALDRON,
Plaintiff in Error,
vs.
MARY A. WALDRON,
Defendant in Error.

Error to the Circuit Court of the United States, for the Northern District of Illinois.

REFERENCES ARE TO PAGES OF THE PRINTED RECORD.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF FACTS.

The fullness with which the testimony favorable to the plaintiff in error is set out in the bill of exceptions, taken together with the constant suggestion of her counsel in their brief that on the merits of the case she suffered an injustice at the hands of the jury, make it proper for us to state the facts in this case and the evidence submitted to the jury with what might otherwise be unnecessary prolixity. There seems to us to be a constant and unnecessary deprecation by all sorts of indirection and suggestion that the jury returned a dispassionate verdict. Inasmuch as this sort of an argument could not be made to this court the suggestion must of course be by in-

direction, and we believe that if every argument of counsel upon a question of law is carefully scrutinized, it will, in almost every instance, be found to eventually base itself upon that ground. A great mass of evidence was submitted in the case. Almost every fact in the lives of the three persons involved, having any sort of relevancy to the issues, was brought before the court. There were necessarily many rulings on the admissibility of evidence, and while we are confident there was no material error, nevertheless it seems proper to suggest that since opposing counsel appear to be constantly urging the merits of the case, the jury had before it a case displayed with unusual fullness, one of investigation into all surrounding circumstances, and rendered their verdict thereon. The facts are as follows:

Mary A. Waldron, the plaintiff below, on the 17th of September, 1865, in Syracuse, New York, was married to Edward H. Waldron. (Rec., 65.) Waldron was at the time of his marriage a clerk in a railroad office, earning a salary of $60 per month. His wife was in the millinery business in the city of LaFayette, Indiana. Before marriage Waldron had for about a year lived in the family of the defendant in error as a boarder, having before him her daily life and the unusual opportunities that gave of judging her character. (Rec., 65.) The couple lived in LaFayette together, with the exception of an interval of a few years when they both lived in St. Louis, until their separation, and Mary A. Waldron is still a resident of the former city. The first fifteen years of their married life was comparatively uneventful. There is indisputable evidence to the effect that it was happy, to which we shall hereafter refer. Their efforts for prosperity were in a great measure successful. Mr. Waldron obtained, and for some time occupied high places in railroad business, earning large salaries. (Rec., 65.) The evidence shows that he was

a weak man, given to pleasures, and consequently given to some vices into which at periods he fell, but always to be rescued by the devotion of his wife, and no permanent estrangement—indeed no estrangement seriously threatening their married life—appeared until the entrance of Mrs. Josephine P. Waldron, then Mrs. Josephine P. Alexander, upon the scene. Mr. Waldron had had some business relations with Mrs. Alexander's husband which led to his acquaintance and a friendship in the family. He was a frequent visitor at their house, and in the position of an intimate friend. There is evidence tending to show that prior to the death of Mr. Alexander the liaison was in its incipiency, at least. Upon his death, the restraint of his presence having been removed, the affair became more violent as is shown by the evidence. Waldron's attendance upon Mrs. Alexander during her sickness, his residence at her house, the caresses bestowed by one upon the other testified to by the servants and by the electrician, O'Neil, all of them go to show her enamored condition, and his as well. Evidence was also before the jury tending to show that she had on various occasions summoned him to her. She was aware, as admitted by her, of the strained relations which existed by reason of her, Mrs. Alexander's relations with him, having been so advised by Mary A. Waldron herself, and yet abated not a particle her intimacy with Waldron. At about this time, being the year 1886, Mr. Waldron left his home, and, as is confessed by him in his testimony, with a view to forcing his wife, Mary A. Waldron into suing for a divorce, instructed the tradesmen at LaFayette not to trust her for the necessaries of life. (Rec., 174.) This was the first step. His absence, of course, needed some explanation, which was sought. It is shown by the evidence that after Mrs. Mary A. Waldron had been informed of his position, and had received indubitable proofs of his final intention to get rid

of her, that she consented, induced by his threats, his solicitations, and under his coercion and influence, to allow a suit for a divorce to be brought in her name before the State court at LaFayette, Indiana; the facts show that he was in constant control of this suit (Rec., 245, 246), and very strongly suggest that he furnished the evidence (Rec., 173, 253, 255, 256 and 243), which was evidence of adultery with Mrs. Josephine P. Alexander, upon which the divorce was granted. (Rec., 232, 233.) It is in evidence that at one interview with him at the Beaurivage Flats in Chicago, she was treated with such brutality as to shatter her severely, and make her indeed quite ill, in which condition her son found her. (Rec., 70, 107.) The divorce being granted to Mrs. Mary A. Waldron, four months thereafter Mr. Edward H. Waldron was married to Mrs. Josephine P. Alexander, the plaintiff in error, and thereafter this suit was brought.

Edward H. Waldron appeared upon the stand for his wife, Mrs. Josephine Waldron, and by every effort in his power, not stopping short of defamation and attempted disgrace of his former wife, the mother of his only child, he attempted to defend the interests of his then wife, swearing that he never had had any affection for his first wife, suggesting that he married her under coercion in Syracuse, without any previous engagement, without any affection (Rec., 148, 178); that she led him a life of constant bickering by reason of her jealousy; that, if he ever had had any affection for her, it was alienated long before he met Mrs. Josephine Waldron by her vexatious conduct. (Rec., 160.) He swore with the utmost positiveness that at the time of his first marriage, he had no affection for his wife, and was confronted with a letter written two days before his marriage, to her brother, in a vein of great self-satisfaction and happiness at the impending union. (Rec., 179.) This letter he did not attempt to explain. His testimony as to

the constant unhappiness of his married life had its utter falsity illuminated by the introduction in evidence of his diary, in which he had made the following entry (Rec., 262):

> "Friday, September 6, 1875; this is the tenth anniversary of our marriage; have had ten years of married life, and none could be more pleasant; good wife, good comfortable home, made extra pleasant by my excellent wife and my boy Winny, who is now in his seventh year, being six years old the 11th day of May last."

This was ten years after his marriage. In his effort to seize upon any fact which would save his second wife from the verdict they feared, he made much of his first wife's conduct with regard to her son by a former marriage, only showing, however, a laudable maternal instinct and affection, and brought into evidence the misfortune and indiscretion of her young womanhood, long since atoned by a life of unquestioned purity and great self-sacrifice and devotion to him and his interests; in short, nothing of that twenty years of married life was sacred in the face of his recent infatuation. As the jury evidently believed, not even the truth was sacred.

Abandoning his family in June, 1886, he went to Chicago, and thereafter was almost constantly in the society of the defendant, then but recently a widow, her husband having died the preceding February. (Rec., 27.) They took frequent drives, and he was almost constantly at her house (Rec., 27, 28, 45), entering by the back way (Rec., 28, 45), for which purpose after a while, and before he was divorced from the defendant in error, he was provided with a key (Rec., 28, 45), after which he probably often remained all night, as the coachman testified that he often drove him down in the morning. (Rec., 46.) During this period they are shown to have indulged in terms of endearment and embraces. (Rec., 28, 46, 55, 56.) It is unnecessary to follow the parties through all their disgusting and disgraceful *liaison*, made more contempti-

ble if possible by their conduct on the stand, which doubtless, and deservedly, made them in the opinion of the jury wholly unworthy of belief. For example, in their anxiety to put Mr. Waldron at some other place than at Mrs. Alexander's during this period, they testified that he was at the Grand Pacific Hotel. (Rec., 166, 167, 190.) The clerk of that hotel was called and testified that he had not been a guest of the hotel during the period, *i. e.*, September, 1886, to May, 1887. (Rec., 257.)

I feel that an apology is due the court for calling attention these disgusting details, although I deem that this statement of the facts of the case is pertinent now by reason of the constant suggestion and assumption by opposing counsel that an unjust verdict was rendered. Such suggestions occur on the sixty-first page of counsel's brief where they say:

> "It was not a common case, but one in which the sympathies of the jury were easily aroused, and their prejudices liable to be excited with slight cause, and nothing improper or misleading should be brought before them with the sanction of the court either in the way of testimony or by instructions."

And again:

> "The verdict was very large. It was excessive, and how much this cause was due to the free rein given by the court to the jury in permitting them to resort to abstract belief in estimating damages, cannot be known."

ARGUMENT.

I.

RIGHT OF WIFE TO BRING SUIT FOR ALIENATION OF HUSBAND'S AFFECTIONS.

The first question raised by plaintiff in error is as to the power of a wife under the laws of the State of Illinois to bring a suit against another woman for the alienation of her husband's affections. In support of their view that there is no such power, which view they very palpably deprecate, counsel for plaintiff in error cite the case of *Duffies* v. *Duffies*, 76 Wis., 374, wherein it was held that a wife's right to the society of her husband is not the same in kind, degree or value as his right to her society. The bare statement of the proposition seems a sufficient refutation. There is hardly an absurdity in the realms of philosophy which has not some arguments of truth in it, and which is not capable of sustaining a sophistry having occasional gleams of reason in it. Every proposition, however, stands not upon partial truths, but upon the whole truth, and every right judgment is a deduction from the majority and controlling reasons and not from the few and accidental ones. The whole course of modern development in the law has been toward the establishment of greater rights in woman, and the removal of all disabilities under which for many years she suffered.

The gist of such an action is the right of a wife to the love, affection and protection, the *consortium* of her husband, and the only question which has ever been seriously raised upon her right to bring such a suit has occurred by reason of the fact that in certain jurisdictions she labored under a disability as to bringing any suit in her own name for her separate prop-

erty, or for injuries to herself. The old fiction of a husband and wife being one in the eye of the law is out-worn. It and consequent disabilities have been swept away by statutory enactment, and modern progress in almost every civilized community of the world has put the wife in exactly the same position as her husband as to any such suit.

The disability of the wife to sue for her separate property was the sole reason assigned for her lack of power to bring such suit in the case of *Lynch* v. *Knight*, 9 H. L. Ca., 589, and in his discussion of that case in his work on the law of "Husband and Wife," Mr. Montague Lush so states his view of the doctrine announced, and gives what is undoubtedly a correct analysis of the decision (Lush's Husband and Wife, 8, 9), stating that under later legislation by which disabilities have been removed, such an action could now be maintained.

Such right has been upheld in the case of

Holmes v. *Holmes*, 32 N. E. Rep. (Ind. Supreme Ct.), 932.

Hayes v *Nowlin*, 29 N. E. Rep. (Indiana Supreme C.), 389.

Also in

Bassett v. *Bassett*, 20 Ill. App., 543.

Westlake v. *Westlake*, 34 Ohio St., 621.

Bennett v. *Bennett*, 23 N. E. Rep. (case in Court of Appeals of New York, decided December 3, 1889), 17.

Mehrhoff v. *Mehrhoff et al.*, 26 Fed. Rep., 13.

Clark v. *Hanan*, 1 Cin. Sup. Ct., 418.

Foot v. *Card* (S. C. Conn.), 18 Atl. Rep., 1027.

Brisman v. *Paasch*, 7 Abb. N. C., 249.

Baker v. *Baker*, 16 *id.*, 293.

Warner v. *Miller*, 17 *id.*, 221.

Churchill v. *Lewis*, *id.*, 226.

Jaynes v. *Jaynes*, 39 Hun., 40.
Seaver v. *Adams* (S. C. New Hamp.), 19 Atl. Rep., 776.

The cases in Wisconsin, Missouri and Maine are characterized as "stuff" in an editorial article in 31 Central Law Journal, 241, and in view of the fact that the Maine court states that it can find no authority upon the subject, I submit that the somewhat contemptuous allusion is not wholly inappropriate to that opinion; the other cases are so lame in reason, and so out of harmony with the current of legislation, authority and text-writers' opinions that it is creditable to counsel for plaintiff in error that they do not earnestly press the contention. Practically all the cases and authorities recognize the right view that a wife has the same right to the *consortium* of her husband, as the husband has to the *consortium* of his wife, and the statutes of Illinois and Indiana having removed any disability of the wife to bring any action for her separate property in her own name, leave her in both of these jurisdictions capable of bringing such an action as this one.

II.

THE FACT THAT THE PLAINTIFF BELOW HAD OBTAINED A DIVORCE FROM HER HUSBAND FOR THE LOSS OF WHOSE CONSORTIUM SHE BROUGHT THIS ACTION, WAS NO BAR TO THE PROSECUTION OF THE SAME.

I fail to see that it makes any difference that the defendant was divorced from her husband. She has not waived any of her rights for damages by accepting the inevitable. The suggestion that the divorce estops her from recovering for the injury done might be of some force if this were an action in replevin for her husband. She has lost her title to him, it is

true, but that loss, as the jury said, was without fault on her part, and was the fault of Josephine P. Waldron. The necessity of adjusting her relations with Edward H. Waldron arose through the wrongful acts of Josephine P. Waldron, and it seems altogether unreasonable to assert that the plaintiff in error can claim and hold as her advantage the existence of a situation of which she herself is the cause. In other words, that she can urge the consequence of her own wrong-doing and the successful culmination of the conspiracy into which she entered with Edward H. Waldron.

The point has been considered in some cases, and an adverse decision to our contention has never been given. In the case of *Simmons* v. *Simmons*, 21 Abbott (N. C.), 469, the defendant answered that the plaintiff and his wife had been divorced before the action was brought, and that the plaintiff had agreed to live separate from his wife. The court held, that under the circumstances the plaintiff was entitled to an order requiring the defense to make the allegations more definite and certain so that it would appear whether the paragraph of answer setting up this matter was intended as a defense or partial defense, or as a matter in mitigation of damages. The court distinctly stated that the divorce was not a complete defense.

A clear analogy exists in cases where an action is brought for criminal conversation. The fact of divorce or death is no bar to an action for crim. con.

Bigelow's Leading Cases, 338.
Wilton v. *Webster*, 7 Car. & P., 198.

In *Michael* v. *Dunkel*, 84 Ind., 544, Judge Woods delivering the opinion of the court, held that a divorce was not a bar to an action for crim. con., and used the following language:

> " The evidence shows, or tends strongly to show, without conflict, that before the criminal intercourse occurred the appellee and wife had finally separated, that they did

not afterwards live together, and that before the commencement of this action she obtained a decree of final divorce from him; and upon these facts it is insisted that the appellee was not entitled to recover. We think otherwise. The woman was still the appellee's wife, and notwithstanding the differences which had led to the separation, there might have been a reconciliation between them; and indeed there is evidence that the appellee was seeking to bring this about at the time when the offenses of the appellant were committed and discovered. After this discovery, it is not strange that the appellee permitted his wife, without resistance, to obtain a divorce; but he did not thereby waive or lose his right to redress for the injury done. It would not be in the interests of good order and the public morals to permit the seducer of a wife to set up a disagreement, or even a separation, between her and her husband, as a complete defense to an action by the latter for the wrong."

To the same effect are 2 Bishop, Mar. and Div., § 724, and cases therein cited.

Modisett v. *McPike*, 74 Mo., 636.

I have now noticed all the questions arising upon the record independently of the alleged bill of exceptions, and while in no way waiving the objections heretofore urged to any consideration of that bill, now proceed to discuss the questions raised thereunder.

III.

THERE WAS NO AVAILABLE ERROR COMMITTED BY THE ADMISSION OF THE DIVORCE RECORD IN EVIDENCE.

This proposition might be safely stated with the omission of the word "available," but the conduct of the trial by the attorneys of the plaintiff in error makes such statement unnecessary and gives to defendant in error the additional advantage the use of the word "available" implies. It will be observed

that when this record was tendered, Mr. Walker, of counsel for defendant, first objected (Rec., 108), on the ground that the record contained certain charges made in the petition reflecting upon the character of the defendant made by the plaintiff herself in a case which she instituted in Indiana without the knowledge, and certainly without the approval of the defendant below. The court then declared that it would admit the record for the purpose of showing the divorce, but that the portion of the declaration (petition) reflecting upon the character of the defendant would be omitted. There was some further discussion upon that point and collateral matters, and recurring again to the question of admitting the record, the court expressly ruled (Rec., 110) that no part of the record reflecting upon Mrs. Alexander should be read, and stated that if evidence were introduced connecting Mrs. Alexander with the responsibility for the declarations in the petition, it would then be competent to introduce them in evidence. But the ruling was expressly that only such parts of the record would be read as did not reflect upon Mrs. Alexander, and to this ruling Mr. Walker objected in the following language:

> "I object to any part of that record going in for any purpose, because it is not a record that binds the defendant at all, and it is not a record of any case to which she was a party, or to which she was a witness; I wish my objection and exception entered to it going in for any purpose."
>
> "The COURT: I think it is competent evidence because it shows conclusively to all the world that they were divorced at 'the time;' and therefore the court ruled that the said record should be admitted, to which ruling of the court counsel for the defendant then and there duly excepted." (Rec., 110.)

In the bill of exceptions the record as set forth does show an allegation that Edward H. Waldron was enamored of one Josephine P. Alexander. Whether this was actually read to

the jury or not does not appear, except from the statement of the bill of exceptions, and this is in direct contradiction of the ruling of the judge in admitting the evidence. This part of the bill of exceptions would seem to be an inadvertence, but however it occurred, I deny that the plaintiff in error has saved any question upon it.

It is an elementary principle of law that objections to testimony *en masse* are unavailable. Thompson on Trials, Sec. 696. The principle is that the court must be advised of the specific point urged by counsel in order that he may rule intelligently upon it, and not be forced to the impracticable course of scanning every question of law which might be raised on evidence submitted. As many of the cases state, it is not a technical rule, but one intended to mitigate the hardships of technicalities. It saves the necessity of re-trials, puts the court upon notice of the exact point to be relied upon, and therefore tends to do away with the technical questions which might be raised in the appellate court. The reason of the rule is well stated in *Rush* v. *French*, 1 Arizona, at page 125 (and see also following page), where the court said:

> "The parties must stand or fall upon the case they made below, for this court is not the forum to discuss new points of this character, but simply a court of review to determine whether the rulings of the court below on the case presented were correct or not."

When evidence is submitted part of which is competent, and part of which is incompetent, the objectionable part must be specifically pointed out.

Elliott Appellate Procedure, Sec. 780.
Wallis v. *Randall*, 81 N. Y., 164.

The party is confined to the specific objection taken at the trial.

Hinde v. *Longworth*, 11 Wheat., 199.

If this divorce record, or any part of it, was admissible for any purpose, then the objection and exception made by counsel for plaintiff does not avail, for their objection was to the admission of the record for any purpose. It is true that previously they had stated an objection on the ground that the divorce record contained an allegation against Mrs. Josephine P. Alexander, but in a subsequent colloquy between the court and the counsel this objection became unavailable for the reason that the court expressly excluded any part reflecting upon Mrs. Alexander, and if the bill of exceptions states the fact when it says that such incriminating passage was read, then counsel for plaintiff in error negligently permitted it to be read, for the ruling of the court was in their favor, and they should have been watchful to prevent any inadvertence when the evidence was actually submitted to the jury. They have saved no exception as to such reading. Certainly it cannot be held that they were released from all responsibility when they informally objected and never took any exception upon that particular objection. The only exception presented by the record is to the admissibility of the whole divorce record in the Indiana court, and it is submitted that this court can only consider that point. That the record was admissible is well sustained by authority.

The decree of divorce is a judgment *in rem*, binding upon all the world as showing the status of the parties. It is conclusive against all parties as to the fact that Mary A. Waldron is no longer entitled to the love and affection, the *consortium* of her husband. It is not conclusive as to why she is no longer entitled to it. The loss of *consortium* is one of the material facts in issue. It bears a strict analogy to the rules of evidence in criminal cases where it is every-day practice to admit evidence to prove the *corpus delicti* before there is any proof connecting the defendant with the crime. The fact that the crime

has been committed is the first issue to be established by the prosecution, and in many cases it would be utterly impossible to prove the commission of a crime if evidence were only admissible which showed upon its face some connection of the defendant with the state of facts sought to be proven.

Much more is this principle important where the case involves questions of conspiracy. Indeed, a great branch of the law has been established on these questions of conspiracy and the evidence which can be admitted to prove it. Necessarily the proof is circumstantial and more remote. The connection is more inferential than in other cases where the direct acts of the parties charged can be proven. The case at bar involves practically a question of conspiracy. The motives are found in the mind of Mrs. Josephine P. Alexander. The overt acts, most of them, following upon those motives and volitions, come through Edward H. Waldron. The consequences of these acts are evident by the necessary acts of Mrs. Mary A. Waldron following upon those consequences. The logical connection is close and irrefutable. This record is of itself admissible as tending to prove one of the issues in the case, namely, the actual loss of the *consortium*. We are not compelled to show any connection with the acts of the plaintiff in error. We offered in evidence certain antecedent acts of hers which may or may not be the direct and efficient cause for the situation which we have already proven. This is a question for the jury upon consideration of all the circumstances. If we present no evidence from which an inference might be drawn that Mrs. Alexander instigated and was the cause of this alienation, then we have failed in our proof and the attorneys for defendant can move the court to instruct the jury to return a verdict for the defendant because of such failure. If, however, there is any evidence which tends to prove her activity to the end of depriving the defendant in

error of her husband's love and affection, then it is a question for the jury to decide whether such evidence is sufficient or not. Best on Evidence very clearly points out the inapplicability of the rule against *res inter alios acta* to those cases where it is necessary to prove the *corpus delicti* first. At Sec. 508, he says:

> "So when the matter in issue is an act separable from the person of the accused who is, nevertheless, accountable for it, proof may be given of that act before he is connected with it by evidence. This may be illustrated as follows: Offenses, as we have heretofore shown, are rightly divisible into *delicta facti permanentis*, and *delicta facti transeuntis*—those offenses which leave traces such as homicide, arson, etc., and offenses which do not, such as conspiracy, criminal language, and the like. With respect to the former, it is every day's practice to give proof of the *corpus delicti* before any evidence is adduced affecting the accused, although without such evidence the antecedent proof goes for nothing. And the same holds where the offense is *facti transeuntis*. Thus, on an indictment for libel, proof may first be given of the libel and the defendant may then be shown to be the publisher of it. Another illustration is afforded by prosecutions for conspiracy, where it is the settled rule that general evidence may be given to prove the existence of a conspiracy before the accused is shown to be connected with it, for here the *corpus delicti* is the existence of a conspiracy, and the participation of the accused is an independent matter, which may or may not exist. The rule that the acts and declarations of conspirators are evidence against their fellows rests partly on this principle and partly on agency."

In section 441, Best describes *delicta facti transeuntis* in a manner which very clearly indicates the necessity of an alteration of the rule for exclusion of *res inter alios acta* with regard to them.

He says they are offenses "the essence of which con-" sists in intention, of an exclusively psychological nature and

" necessarily to be established by presumptive evidence, as is " also the case in adultery."

I believe we have shown our case to be within these necessities.

On another ground, too, the admission of this evidence is to be sustained.

Prior to the admission of the divorce record it was in evidence that the plaintiff was living apart from her husband. This might have contained an inference to the jury that she was living apart from him of her own choice. That she was still entitled to his love and affection, and by proper conduct might re-establish herself and him in their marital relations, and explain and settle any temporary estrangement then existing.

The divorce record would then be admissible to conclusively rebut any such possible inference, if it would show that she was no longer entitled to his *consortium*; that she could not then lawfully live with him, could not lawfully claim his protection, or any of those rights which she had theretofore had in him.

The decree of divorce would effectually rebut any possible inference that at the time of bringing suit she was living apart from him in violation of her duty as a wife. It would justify her as to the then existing separation. We do not claim that it could have any force as evidence as to what brought about that separation. That was a matter for other evidence, and the jury undoubtedly thought that other evidence which was before it, was sufficient.

This record, and Waldron's marriage to the plaintiff in error proved that the alienation for which damages were sought, was of a permanent character, and excluded the idea that it might be temporary and terminated by a reconciliation.

Again, the manifest want of fairness in urging that error was committed by allowing this record to go before the jury, is illustrated by the fact that the attorneys for the plaintiff in error themselves in effect gave it in evidence as a part of their defense; they did not at first except from this record all that referred to their client, but on the contrary supplied and made clear to the jury what otherwise was at most but matter of inference and argument. I claim that they are estopped from asserting any injury done by the admission of this divorce record in evidence. At page 229, *et seq.*, of the record, it will be seen that they introduced in evidence and read to the jury sensational newspaper accounts of the suit, in which a *præcipe* had been issued about the time of the publication of the articles. These publications distinctly asserted that the La-Fayette divorce was granted on account of Waldron's connection with Mrs. Josephine P. Alexander. The story is told by the papers with all the gusto for sensationalism in which the press sometimes indulges, and is full of harmful inferences against Mrs. Josephine P. Waldron, and brought clearly before the jury the assertion that the divorce was granted on account of the unlawful intercourse of Edward H. Waldron with this plaintiff in error. In bringing this into evidence, it is to be presumed that counsel had an intention to impress the jury with the idea that the suit at the time of its bringing contemplated a sort of blackmail; that it was to be tried in the public press, and used for extortion. Seeking this impression, to which they had no right whatever, even under the rules of evidence, they were willing to risk the inferences upon the other side of the case which the jury might draw. I say, then, that evidence as to the cause of the divorce in Indiana was clearly before the jury, and that no court can say that the jury arrived at its conclusion from the divorce record when there was evidence introduced by the defendant herself to the same point.

It is not necessary to question the technical right to assign error for the admission of evidence which parties themselves afterwards, for their own benefit, cause to be offered and admitted, nor whether by such circumstances such parties are not estopped from so assigning error. It is enough to defeat entirely all the arguments of these counsel upon this subject, to show that their impressive complaint against the reading to the jury of these allegations against Mrs. Alexander is forever robbed of whatever dignity it might have possessed, by their own blunder in reading to the jury, surrounded by all the artificial emphasis of newspaper sensationalism, these very allegations to the introduction of which by the plaintiff's counsel they so strenuously object. Let counsel for defendant point out the distinction to their injury between the reading to the jury of allegations in the non-commenting language of the court record, and the reading of the same allegations in the insinuating language of a newspaper.

It is, too, to be remembered, that the court excluded, and there was not read to the jury, that portion of the divorce record which contained charges against Mrs. Alexander, except the mention in the petition. (Rec., 110.) This is conceded, and the record as admitted and printed shows by the usual signs that such omission took place. (Rec., 111.) It was supplied by plaintiff in error after these exceptions had been taken (Rec., 229, 230, 231, 232, 233), which conduct must, it is thought, be deemed a waiver of all such exceptions.

1 Thompson on Trials, Secs. 706, 707.

And again, the instructions of the court make it clear that the defendant could not have been prejudiced either by the admission of the divorce record or the statutes of Indiana upon the subject of divorce, or any inferences sought to be drawn therefrom by counsel. (Rec. 279, 280.)

"The court's charge is entitled to a reasonable construction. It is construed as a whole in the same connected way in which it was given, *upon the presumption that the jury did not overlook any portion, but gave due weight to it as a whole.*"

Castle v. *Bullard*, 23 How., (U. S.), 172, 189.
Thompson on Trials, Sec. 2407, and cases therein cited.

Thus it is possible for error to be corrected and cured by drawing the attention of the jury carefully to the fact, etc.

See

Steagald v. *State*, 22 Tex. App., 464.

"When, for example, upon a criminal trial, the judge in charging the jury, lays down erroneous propositions, but upon his attention being called thereto by objections, corrects the misdirections and lays down the correct rule, no error is presented for review.

People v. *Kelley*, 35 Hun. (N. Y.), 295, 302, and cases therein cited.

"When the jury has been correctly instructed, and has returned a verdict, an inquiry will not be made as a ground for a new trial, whether they did not misunderstand the instructions. They are presumed to have understood them."

Lathrop v. *Sharon*, 12 Pick., 172.

It is to be noted in the case at bar, that the error assigned in this connection rests upon the presumption that the jury was wrongly influenced by improper evidence, and is not to be overcome by the court's explicit instructions to overlook such evidence; and that the presumption that the jury in reaching its verdict was influenced by improper evidence is stronger than the presumption that the jury, in reaching its verdict conformed to and was influenced by the court's instructions to disregard such evidence. But the principles above cited show

that these inferences of the plaintiff in error are not sound. The correct rule is that where the court definitely and carefully instructs the jury to ignore certain improper evidence in reaching its verdict, the presumption will be that the jury followed the court's instructions, and no inquiry will be allowed to show that the jury misunderstood or disregarded the court's instructions. Thus:

The prevailing opinion is that the error of admitting incompetent evidence may be cured by an instruction admonishing the jury to disregard such evidence, even in a criminal case. *Hopt* v. *Utah*, 120 U. S., 430.

State v. *May*, 4 Dev. Law, 330.
Goodnow v. *Hill*, 125 Mass., 589.
Smith v. *Whitman*, 6 Allen, 562;
Hawes v. *Gustin*, 2 Allen, 406.
Dellin v. *People*, 8 Mich., 369.
Specht v. *Howard*, 16 Wall., 564.

In this connection, see

2 Thompson on Trials, Secs. 2415, 2416,

where it is said:

> "It is sometimes proper, and even necessary, for the court to instruct the jury as to the purpose for which particular evidence has been introduced, admonishing them to confine the application of the evidence to such purpose."

Even conceding, for the purposes of this argument, that counsel have saved an exception to the reading of any part of the divorce record containing charges against Mrs. Alexander, we claim that such evidence was admissible as a part of the *res gestae*. The only charge against Mrs. Alexander which counsel can claim went to the jury out of this record was the one in the petition. That was a charge ostensibly made by Mary A. Waldron, and having connected as we claim we did, and

as the jury held we did, Mrs. Alexander with the whole conspiracy, it was competent to show as a part of the *res gestae* any act of Mary A. Waldron during the progress and culmination of this conspiracy and her declarations at that time following as a necessary consequence upon the wrongful acts of Mrs. Alexander. In addition to this, we have shown, as we claim, that the whole suit was practically instigated and controlled by Edward H. Waldron, acting under the influence of Mrs. Alexander; that they were practically co-conspirators, and his acts in procuring such suit, and having the petition framed, are competent evidence against his co-conspirator. Indeed, there was evidence before the jury tending to show that the evidence of the adultery charge against him and Mrs. Alexander was furnished by him. Certainly the rule of *res gestae* should have a peculiar application to this case where the active agent works through an instrument, whose acts are the only open ones. Any sort of evidence tending to show her connection with the mental and moral attitude of Waldron which led to the open acts, make such acts competent as against her. The jury is alone to judge as to whether or not sufficient connection has been made, and its judgment is conclusive on that point.

This difficulty of proof having been surmounted, the court recognized the fact that her sin could never be brought home to her unless the proof of the consequences of her secret machinations could be proven against her. As an example of how far this rule of *res gestae* has been carried, we would cite the court to the case of *Jewell* v. *Jewell*, 1 How., at page 232, where the opinion was rendered by Mr. Chief Justice Taney. The wisdom of construing this rule so as to cover the exigencies of cases presenting otherwise insuperable difficulties of proof was distinctly recognized in that case, and in accordance with that principle it was held that a

publication in a newspaper, made about the time of certain acts in issue, by a husband, or one purporting to be the husband, giving notice to all persons that no credit should be given to his wife, could be admitted in evidence as a part of the *res gestae*, although no connection was shown between the publication and any act of the husband. It was one of the circumstances which might or might not follow the act of the husband, and the court held that it was a proper matter for the jury to judge whether or not there was any connection between the husband and this act.

It would be unnecessary to cite the numerous authorities illustrating the elasticity of this rule. It is a salutary provision that the rule is elastic. The reason at the base of it is fixed, but the application is wide-spread and multiform. The rule has its particular application in cases of particular difficulty of proof, and has wisely in mind that secret sins, manifesting themselves at a distance from the scene of action, can only be proven by the facts surrounding the time and place where that action manifests itself. The painful exclamations and acts of persons at the time when the secret blow falls, are the best evidence as to the effect and source of that blow. The mind under the stress of the pain, incapable of fabricating a falsehood, manifests itself in simple and unaffected acts and expressions which are among the most reliable evidences of truth.

We claim that whatever acts Mary A. Waldron did in connection with this divorce proceeding were acts done when the blow fell upon her, and its consequences confronted her. She acted under that stress and in direct consequence of the pain inflicted upon her, and, as the conspirators had foreseen she must act when they had placed her in a certain situation.

Counsel for appellant cite with much confidence the case of *Tappan* v. *Beardsley*, 10 Wall., 427, as conclusive upon the

question of the admissibility of this divorce record. That case was a suit for libel wherein Beardsley, the plaintiff below, asked damages by reason of a publication by Tappan alleging that he, Beardsley, was about to be sued by his wife for divorce and alimony, had put his goods out of his hands and that his business would fail if such suit were brought. Beardsley introduced in evidence the record of the divorce proceeding, which contained among other things an answer and depositions tending to show that the suit was not authorized by Mrs. Beardsley, but had, on the contrary, been instigated by Tappan in order to justify his statement. This evidence the court through Mr. Justice Miller held to be inadmissible, and we fail to see how there could be any application of the principles there laid down to the point now under consideration. It is true that in each case the evidence assailed is a divorce record, but the identity of names is far from suggesting any logical analogy of relevancy. The decision simply was that as the case stood there was no issue as to the institution of the divorce proceedings, and further that if there were, the evidence of Tappan's hand in it should have been evidence capable of cross-examination in the suit; that the admission in evidence of an answer in another suit, unsworn to, and depositions taken in such suit, wherein Tappan had no rights, presenting manifest opportunities for the fabrication of testimony, was improper. The proof could and should have been adduced in the action at bar, if the bringing of the divorce suit were put in issue. In our action we adduced all evidence of this character directly in the action and accessible to cross-examination.

Here, we were attempting to show the status of the parties, that they were no longer man and wife, that at law the plaintiff no longer had nor was entitled to the *consortium*, the affection and the protection of her sometime husband. The best proof

of that was the record of a divorce by a competent tribunal. The loss of the *consortium* was a fact directly in issue, not all of the issue, but an essential part of it, and any evidence which proved or tended to prove the loss was pertinent to an issue in the case.

The case of *Crose* v. *Rutledge*, 81 Ill., 266, is also cited. That action was for seduction, and the evidence in divorce was not offered by the plaintiff, but by the defendant in mitigation of damages. The divorce was granted to the wife of Rutledge (plaintiff below) for desertion, and evidently if it could have any bearing at all to any issue it could only have been as evidence that he had deserted her, which would be bringing into the case the judgment of a court upon a matter there to be proven by original evidence and an independent finding of the jury. The tender of the record as evidence was not addressed to proving the status of the parties, but to proving that he had deserted her, for which it was clearly incompetent.

Counsel for plaintiff in error, in their argument on the admissibility of this record, incidentally raise also the question as to the conduct of counsel, by suggesting that the record gave the counsel for defendant in error an opportunity to argue to the jury as to inferences to be drawn from the record. About the conduct of counsel we shall have something to say hereafter, but as to getting an opportunity for argument from this record we have heretofore pointed out that the allegations of adultery in the petition were connected with Mrs. Alexander, and consequently formed a proper subject for discussion to the jury.

As connected with this divorce record, error is assigned upon the admission in evidence of the statutes of Indiana governing divorce. We are unable to see how any consequence of importance could have grown out of the submission of these

statutes to the jury, and suggest that even if there were an attempt by counsel to connect these statutes with the decree in such a manner as to get before the jury the fact that the divorce had been granted for adultery, still the error, even if there was error, could not have had such effect upon the jury as to warrant a reversal. Besides this, we contend that there was no error, for we have connected Mrs. Alexander with the whole proceeding of divorce in Indiana, and shown, as we think, and as the jury appear to have held, her responsibility for any inference which might be drawn from that proceeding. To make the record effective as showing the status of the parties, it was necessary to show that the court operated within its powers when it granted the divorce. There are no common law rules or general principles of equity governing divorce, and if the court acted beyond its statutory jurisdiction, the decree would have been void. It was necessary, therefore, to show that the parties were before the court, and that the court had jurisdiction of the subject-matter. In order to show this, it was necessary to show what the statutes of divorce in the State of Indiana were.

Lawrence's Case, 18 Abb. Prac. Rep., 347, holds that since the power to grant divorce is purely statutory, when it becomes necessary to prove divorce the jurisdictional facts have to be shown, that is, it has to be shown that the court was acting within the statutes. It is there said: "The jurisdiction in such cases "thus conferred by the statute, is therefore of a limited nature, "and could not be exercised, except within the limitations of "the conditions prescribed." If the power were an original one, it would be otherwise.

In *Cook* v. *Cook*, 56 Wis., 195, it was held that although marriage is a status, yet the judgment of divorce granted in another state under a statute making jurisdiction dependent upon the residence of the party bringing the action, and where

the defendant was not personally served, is not a bar to an action by the defendant for divorce in the State of Wisconsin.

A great conflict of laws has arisen among the various states on these questions of divorce, and all decrees of that nature are closely scrutinized, and in very many jurisdictions the decisions go far toward denying their validity in spite of the constitutional provision of "full force and effect,"—that provision being avoided by holding that the judgment of the State court on a question of divorce can only affect its own citizens; that it is a law determining the status with regard to its citizens only, and is of local application.

Chief Justice Shaw, in *Smith* v. *Smith*, 13 Gray, 210, points out that the action is not one purely of personal right, but one in which the public has a great interest, and he therefore held that a decree in another state did not operate as an estoppel, indicating that if it had been a decree involving some personal right, he would have held otherwise.

All of this conflict illustrates and emphasizes the necessity of going before the court with a clear and complete record showing jurisdiction of the persons and the subject-matter, and this we could not have done unless we had been permitted to show what the laws of Indiana were with regard to it. This was not admitting proof that the Indiana court had found that acts of adultery or cruel treatment had been committed. As to that point, the jury were repeatedly and specifically cautioned that the record was only admissible to show the status; the evidence admitted, therefore, went only to the fact, and was strictly limited by the court to the fact that the court of Indiana had acted within its jurisdiction, and had issued a decree which determined the status of Mary A. Waldron.

IV.

REMARKS OF COUNSEL.

As connected with the admission of the divorce record, counsel for plaintiff in error raise the point that Mr. Dexter of counsel for plaintiff below made remarks outside the evidence, which had a tendency to prejudice the jury. These remarks are set forth quite extensively in the brief. The record shows that defendant's counsel objected to Mr. Dexter's argument at the point where they allege he went outside the evidence, and also shows that the court, upon this objection, stated to Mr. Dexter that all that was in the declaration (petition for divorce) had been excluded by the court. There was no further attempt by the counsel for plaintiff in error to have Mr. Dexter confine his remarks to what they conceived was in evidence. There was no suggestion to the court that it should compel him to limit these remarks as they allege he should have limited them, and there was no exception taken. We contend that Mr. Dexter's remarks, being upon the allegations of the petition for divorce, were waranted because, in our view, the allegation as to Mrs. Josephine Waldron was, as we have heretofore shown, in evidence. But even granting that he went outside of the evidence, we think the instructions of the court have cured whatever injury might have been done by these remarks. These instructions on the point of the divorce record seem to us to compietely do away with the contention of plaintiff in error that she was injured by the introduction of that evidence. It is an undeniable rule of law that even if improper evidence is admitted the court may avoid the error by instructing the jury to disregard it. No instructions could be clearer to that effect than those in this case. We quote from the judge's charge to the jury on page 279 of the record:

"The court has already adjudged that the decree of divorce obtained by the plaintiff from Mr. Waldron, June 21, 1887, is evidence conclusive in this case that the marriage relations between the plaintiff and Mr. Waldron were dissolved from the date of that decree. The decree of divorce acted upon the status of the parties and dissolved the marriage relation theretofore existing between them, and left each free to remarry, but the allegations contained in the bill of complaint in that case against Mrs. E. S. Alexander, the present defendant, are not evidence in this case and were excluded by the court.

The evidence also taken on the trial of that case is not competent evidence against the defendant in this case, and was also excluded. She, not being a party thereto, is not permitted to appear and cross-examine the witnesses. *Nor should the jury assume or infer from anything in evidence in this case that the judgment of divorce was granted on the ground of adultery, as that is not one of the grounds alleged in the bill of complaint, nor upon any ground of—for any of the causes having reference to the conduct of the defendant in this case.* Such an inference has been sought to be drawn by counsel from the proceedings in that case, but it is an inference not *warranted by the record in evidence, and unfair towards the defendant. The jury will try this case upon the evidence produced on this trial, and not assume or infer that other evidence might have been produced here or was produced in some other case to which the defendant was not a party.*"

It seems to us no matter how detrimental the evidence might have been, and no matter how incompetent, still there is nothing to complain of after such an instruction. Nothing could be clearer or more explicit. Nothing could be more calculated to remove from the mind of the jury any prejudice which might have been aroused. This instruction was not the only action of the court upon the evidence which counsel complain of, but at the time of its admission the jury were repeatedly admonished and given to understand that the evidence only went to the status of the parties, and that they could consider nothing else.

It would be utterly impossible to conduct without error a trial of any case presenting a great mass of evidence with many difficult points of ruling as to admissibility, if the court could not at a later stage of the proceedings, by its explicit admonitions remove the effect of error which inadvertently crept in.

The plaintiff in error not only has to show that there was error in letting this evidence in, but also has to show that it was evidence of such a character as might reasonably be held to have prejudicially affected her.

We think that after the admonition of the court it can fairly be presumed that the jury did their duty.

It is also to be noted that the exceptions taken to the remarks of Mr. Aldrich were, in every instance but one, upon questions of difference as to what the evidence had been. (Rec., 262–265.) That one exception relates to the inference to be drawn from the divorce in Indiana, and was fully covered by the court's instruction to the jury. Counsel for plaintiff in error, as has been heretofore pointed out, had submitted papers to the jury, from which it is insisted that counsel were warranted in asking the jury to draw conclusions unfavorable to the defendant and quite independent of the record. The conduct of the parties, the fact that they were constantly together, she knowing him to be a married man, and lavishing upon him caresses and endearments, and harboring him at her residence for months, where he could not remain an hour except by her invitation; he was penniless (Rec., 174) and took great pains to tell the jury that he brought nothing to Chicago but an "old father and mother's family Bible and wardrobe" (Rec., 174); she was rich; he was in idleness, except as she kept him engaged in his devotion to her; he instituted a divorce case, which he compelled and controlled, and of which he paid all the expenses (Rec., 118, 132, 135, 246), and of

which all the testimony was furnished by his agent (Rec., 246, 255, 256), who visited him in Chicago while negotiations were going on (Rec., 132) and received from this penniless man large sums of money in this connection (Rec., 132); all these facts, taken in connection with their speedy marriage, justified counsel in urging upon the jury as a logical deduction that the plaintiff in error was a party to the conspiracy to break up the home of the plaintiff below. It is to be remembered, too, that the jury had the plaintiff in error before them as a witness and could judge of the credibility of her denials that she and her then paramour had ever talked of the proceedings necessary to legalize their then unholy relations.

It is to be remembered that no reference discreditable to the defendant was ever read, the statement of the petition in no way indicating any action on her part. The fact that the defendant's name appeared in the record was first made known to the jury by the statement of her own counsel, Mr. Walker (Rec., 108), and the facts surrounding the divorce proceedings in Indiana put in evidence by them. I respectfully submit that the question whether the defendant was then or thereafter connected with that record was a question for the jury, and one which we, as attorneys, had a right to argue. If the parties interested in the common purpose were shown to be together constantly, one with money and one without; the latter furnishing large sums to an agent and witness to procure a divorce, which could only be procured by proof of his own misconduct in some particular; this money shown to have come from Chicago; the marriage following closely the divorce, and the demeanor of the parties upon the witness stand; in fact, the complete breakdown and panic of one of them; these facts may, and I submit should, have overcome the bare and naked statement of these co-conspirators, that they never conferred with each other about their unholy but common purpose. At least, I submit it

was properly left to the jury to say whether they would believe this improbable story, and that it cannot be reasonably claimed that counsel abused their privileges, when they urged the jury from admitted and admissible evidence to so disbelieve the defendant and her paramour, now called her husband.

And in this lies the distinction, as I submit, in the cases defining the rights of counsel in addressing the jury.

It is no misconduct to urge the widest inferences from the evidence. It is misconduct (not sufficient to warrant a new trial, if corrected by the court in his instructions) to comment upon matters not in evidence. I think no well considered case can be found where the verdict of the jury was interfered with because the attorney urged inferences from proper evidence not warranted in the opinion of the court. To establish such a rule would be equivalent to saying that every argument of attorneys engaged in a contest must be sound, and as in every such trial there are at least two such, we would be reduced to the absurdity of holding that both must be right, a conclusion often sound in a qualified sense, not in the broad one in which it is sought to be here applied. The practice and traditions of our profession, as well as the rules of common sense, have established the right of each advocate to urge a jury to adopt the conclusions most favorable to his client from the evidential facts, and has delegated to the jury, and not to the court, the power to decide between them. Therefore, I submit, that if any party had a right to complain, it was the plaintiff, when the court, both upon trial and in the instructions, so limited the effect of the divorce record. This is not urged by way of complaint, though had the verdict been otherwise, nearly all the matters assigned by the defendant as error, including this, would doubtless have been so urged. The defense seems unable to appreciate when it has been well used.

The court in *Henry* v. *C. & C. R. R. Co.*, 121 Ill., 268, used the following language:

> "But it is not to be assumed that every misstatement of law or fact will have the effect of exciting improper prejudices. The instructions of the court and the good sense of a competent jury are a sufficient protection against ordinary errors of statement and false arguments of counsel. We find nothing in this record to induce us to believe (the jury having been correctly instructed as to the law), that they were excited by these remarks, to act in a way they would not otherwise have acted."

In *C. & A. R. R. Co.* v. *Johnson*, 116 Ill., 206, on the trial of an action against a railway company to recover for a personal injury from alleged negligence, the plaintiff's counsel in his closing argument to the jury said:

> "For more than twenty years I have stood as an humble advocate of the people against the power of such monopolies as this."

On objection thereto, the court observed that "the remark "was very objectionable, and must not be repeated, and the "jury should entirely disregard it." *Held*, "that the remark "was culpably out of place, in violation of professional duty, "and should meet a court's pointed rebuke; but the court de- "clined to reverse for that alone."

In *Felix* v. *Schwarnweber*, 119 Ill., 445, in the closing argument to the jury, in a suit to recover for an alleged breach of contract, the plaintiff's counsel commented on the fact that his client, in whose favor a judgment was rendered, was a poor man, and that defendant was a man of wealth and leisure, traveling in Europe. The court sustained an objection to the remarks, and said that such considerations should not be regarded by the jury. *Held*, "that while the remarks of coun- "sel were very objectionable, yet, when taken in connection "with the advice of the court to the jury, the error was not of "such gravity as to require a reversal of the judgment."

In *Baysinger* v. *The People*, 115 Ill., 419, on the trial of an indictment of a supervisor for unlawfully withholding a record from the proper custodian, the state's attorney, in his closing remarks to the jury, charged the defendant with stealing an affidavit made by him at a previous term of court for a continuance, and reiterated the same after objection by defendant, and being warned by the court that it was improper, and stated that the defense was all a sham, and that defendant had fled from justice and never surrendered himself until he found the witness was dead, and then hatched up his rotten defense. There was no evidence upon which to base such remarks, and they were reiterated after being informed by the court that they were improper. *Held*, "that such remarks were clearly "improper, and a breach of both professional and official duty." Nevertheless, the court said: "Yet, under the circumstances, "we do not regard them of so gross a character as to warrant "a reversal of the cause for that reason."

This is further illustrated by the decisions in *Marder, Luse & Co.* v. *Leary*, 137 Ill., 319; *City of Chicago* v. *Leseth*, 142 Ill., 642.

There were no exceptions taken to Mr. Dexter's remarks and no ruling of the court asked for or obtained with reference either to the argument of Mr. Dexter or Mr. Aldrich. Under such circumstances, the appellate court cannot pass upon the subject of such remarks.

Smith v. *People*, 142 Ill., 117, 124.
Crumpton v. *United States*, 138 U. S., 361.

In all of these cases, and in every case I can discover, the assignment is based upon improper remarks of counsel concerning facts *dehors* the record. The defense is entitled to credit for the originality of the suggestion, that it is an abuse of privilege of counsel to comment upon admitted evidence, and urge the jury to adopt a theory favorable to his client therefrom.

V.

TESTIMONY OF HUSBAND AND WIFE.

The next point raised in the brief of plaintiff in error (at page 34) is as to the admission of testimony of Mary A. Waldron, on the ground that she was the former wife of E. H. Waldron, though it is merely stated, the argument addressing itself to other collateral questions.

The evidence is set forth quite fully in counsel's brief, and incidentally raises those questions, one of which is presented at pages 38 and 39 of their brief.

It raises the point that Mary A. Waldron should not have been allowed to testify as to what induced her to get a divorce —the objection being on the principle that the defendant was not responsible, and was in no way, under the evidence in the case, connected with threats made by Waldron to his then wife.

This we have heretofore answered in our remarks as to the analogy between this case and one of conspiracy; having shown Mrs. Alexander's connection with the conspiracy, or at least having adduced evidence upon which the jury so found, it was competent to show any acts in furtherance thereof. And, furthermore, the evidence was competent as a part of the *res gestae*.

In short, a large part of the argument we have made under the question as to the admissibility of the divorce record applies to this point, and, we contend, answers it.

As to the admissibility of the wife's testimony in a case of this kind, the statute hereafter quoted is too plainly in favor of it to admit of argument, and counsel practically concede it.

Their principal contest, however, is as to the ruling of the

court in refusing to allow Mary A. Waldron to be cross-examined as to conversations with her husband at the Beaurivage Fats, she having testified in chief as to certain facts of that interview.

Counsel assert that these facts, being in their nature conditions which arose out of conversation, they had a right to draw out the conversation in order to test the facts. The evidence, however, was excluded under the section of the Illinois statutes providing for the admission of testimony of husband and wife.

That section or paragraph is as follows:

> "No husband or wife shall, by virtue of section 1 of this act, be rendered competent to testify for or against each other as to any transaction or conversation occurring during their marriage, whether called as a witness during the existence of the marriage, or after its dissolution, except in cases where the wife would, if unmarried, be plaintiff or defendant, or where the cause of action grows out of a personal wrong or injury done by one to the other, or grows out of the neglect of the husband to furnish the wife with a suitable support; and in cases where the litigation shall be concerning the separate property of the wife, and suits for divorce; and except, also, in actions upon policies of insurance of property, so far as relates to the amount and value of the property alleged to be injured or destroyed, or in an action against carriers, so far as relates to the loss of property and the amount and value thereof, or in all matters of business transactions where the transaction was had and conducted by such married woman as the agent of her husband, in all of which cases the husband and wife may testify for or against each other, in the same manner as other parties may, under the provisions of this act.
>
> "*Provided*, that nothing in this section contained shall be construed to authorize or permit any such husband or wife to testify to any admissions or conversations of the other, whether made by him to her, or by her to him, or by either to third persons, except in suits or causes between such husband and wife."

It will be seen that the proviso states that nothing in the section shall be construed to permit any husband or wife to testify to any admissions or conversations one with the other, and it was under this provision that the conversation was excluded, though the facts arising from the conversation had been temporarily admitted in evidence. However, the court afterwards especially excluded all testimony as to the interview, and the facts arising from the interview at the Beaurivage Flats, as will be seen by reference to the record (page 100), and the colloquy at that time between the court and counsel very clearly shows what testimony was stricken out. This does away with any question as to the injury to Mrs. Alexander in the refusal to allow her counsel to draw out the conversation, and we think it unnecessary to dwell at any great length upon the argument of counsel in their brief, at pages 45, 46 and 47, to the point that the statement of the effects of the conversation raised presumptions which could only be refuted by the conversation itself. That is a legislative question, and was settled by the statute which we have already quoted, which makes no exception to its exclusion of any detailing of conversations between husband and wife. Numerous decisions under similar statutes, have laid down the doctrine that the reason of the rule lies not in the rights of private parties but is one of public policy. In other words, that although in a particular instance the marriage relation having been severed, and the marital happiness of the party not being endangered by a breach of confidence, nevertheless it is of importance to the public good that the law should be understood, in every instance, as forever prohibiting any breach of such confidences; and it is an absolute rule, strictly to be enforced. It has regard not so much to past marriages as to existing marriages and those to come, and says to all citizens of that jurisdiction: "Be assured that the law will protect all your conver-

"sations with each other, whatever may come." It is a salutary provision, necessary to the continued happiness of the marriage relationship. The line must be strictly and unwaveringly drawn, whatever minor injustice it may work, although it has not worked any injustice in this instance. It is a provision which makes possible mutual explanations in times of strained relationships, which without such explanations might develop into unhappiness, distrust and final separation, to the injury of the state.

Counsel make the point that these conversations took place in the presence of third parties, and were therefore not confidential. The statute says nothing of confidential conversations. On the contrary its wording distinctly negatives any such sophistical construction, for it also provides that neither husband nor wife shall testify as to the conversations of the other to third parties. We may suggest, however, that, as this conversation occurred in the presence of third parties, the evidence of what was said might have been adduced by putting those third parties on the stand, if it were as important as counsel assert, to have those conversations before the jury.

The citations of counsel from Greenleaf and the state authorities have no applicability here in the face of the unequivocal prohibition of the statute. They all go to the reason of the case in the particular instance before the court, and in that, we confess, there is some reason, but the reason of the statute is public policy, and any other reason is not adequate to inject into it subtle distinctions. It is true that some of these decisions refer to the matter of public policy, and take the view that that policy is directed only to the preservation of the particular marital relationship then before the court, but we believe that this is a palpably mistaken view, and think it an odd conception of public policy to maintain that it holds forth the promise of protecting the communications of married per-

sons in order to promote the harmony of that relationship, and then withdraws that protection as soon as the relationship is severed. In other words that the public policy gives a man or woman assurance of secrecy, in order that in times of stress they may remove the stress by explanation, and yet withdraws that protection if the explanations fail and divorce ensues. The argument for this sort of public policy seems to go in a circle, to hold forth the form and withdraw the substance of protection.

The statute, we reiterate, makes no distinction between confidential communications and those made in the presence of third parties. It refers to all conversations and makes them inadmissible.

The suggestion of counsel that in this case the court should not be controlled by the Illinois statute on this subject is sufficiently answered by the case of the *Connecticut Mutual Life Insurance Company* v. *Union Trust Company*, 112 U. S., 250. It was there held that the statute of New York excluding certain testimony, was obligatory on the courts of the United States, under section 721 Revised Statutes of the United States, and that there was no ground for the suggestion that Secs. 721, 858 and 914, R. S. U. S, might be construed as relating to the competency of witnesses rather than the nature and principles of evidence.

The first section of chapter 51, Illinois Statutes (1 Starr & Curtis, 1071) provides:

> "That no person shall be disqualified as a witness in any civil action, suit or proceeding except as hereinafter stated, by reason of his or her interest in the event thereof as a party or otherwise, or by reason of his or her conviction of any crime, but such interest or conviction may be shown for the purpose of affecting the credibility of such witness."

It was held in *Mitchinson* v. *Cross*, 58 Ill., 366, that this act

abolishing the disqualification existing at common law on grounds of interest did not have any effect to make husband or wife competent witnesses for or against each other, as their disqualification as witnesses rested upon grounds of public policy, and that under this section and section 5, quoted *supra*, such husband and wife are competent witnesses for or against each other only in the cases mentioned in the exceptions to section 5 of that act.

Recurring again to section 5, it will be seen that these exceptions relate only to *transactions or conversations occurring during the marriage*. Edward H. Waldron was not therefore a competent witness for or against Josephine P. Waldron, his then wife, as to transactions or conversations occurring before his marriage to her. It is therefore submitted that while he might have been a competent witness for or against the plaintiff, assuming that the action was concerning her separate property, in the event that he had not married the defendant, he was not a competent witness after having married the defendant, as to transactions or occurrences prior to the marriage, and that therefore no error can be predicated upon the court's refusal to admit any testimony of his, he being an incompetent witness and the court having erred as against the defendant in error in permitting him to be examined at all as a witness. To the same effect:

Rea v. *Tucker*, 51 Ill., 110.
Hawver v. *Hawver*, 78 Ill., 412.
Smith v. *Long*, 106 Ill., 485.
Gordon v. *Reynolds*, 114 Ill., 118.
Trealeaven v. *Dixon*, 119 Ill., 548.

In the case last cited some earlier cases adopting a more liberal rule with reference to this class of testimony are overruled.

VI.

Admission of Depositions.

At page 56 of their brief, opposing counsel argue the point of the admission of certain depositions in evidence. The first error they ascribe on this is that the depositions were inadmissible because they had been previously suppressed. The record in this case makes very clearly apparent that there was an inadvertence and oversight in the proceedings of the court, or an erroneous entry of the clerk with regard to the suppressing of these depositions. At pages 11 and 12 of the printed record it is shown that counsel for Mrs. Josephine P. Waldron moved the suppresion of certain depositions, and that the court sustained the motion. The ground ascribed for this motion, it is to be particularly noted, was that the depositions were immaterial. Thereafter, as the bill of exceptions shows (Rec., 21, 22), the question was again ruled upon, counsel for each side and the court being very evidently under the impression that the depositions had not been suppressed.

As the case stands before this court, the record shows by a clear inadvertence, we claim, an order suppressing the depositions made before the trial, and the bill of exceptions shows that thereafter, and on the trial, a motion was made to suppress the depositions, which was denied, the court then ruling that it would hold the testimony in those depositions to be immaterial, reserving the right, however, which, of course, it had without reservation, to alter the ruling, which it afterwards did.

The objection made for the alleged first motion for the suppression, that is, the motion made before the trial, was on the ground of the immateriality of the testimony. Mo-

tions to suppress under the Illinois practice are directed to some defect in form, and should be made before the trial. *Lockwood* v. *Mills et al.*, 39 Ill., 602. Motions directed to the admissibility of the testimony in the depositions can be made at any time during the trial. The reason of this is quite apparent. If the deposition is unobjectionable in point of form, the testimony stands on the same basis as any other testimony, but if there is a defect of form the Illinois statute provides that parties tendering the deposition shall have some sort of notice of the objection that they may provide against the defect. Therefore this testimony stands simply upon the question of its admissibility as any other evidence tendered at the trial would stand. There can be no presumption that it was suppressed on account of a matter of form, because the objection explicitly states that it is on the ground of the materiality of the testimony. The court afterward, when the evidence in the deposition was again tendered, following the intimation it had theretofore given, changed its mind, considered certain portions of the testimony relevant and admitted it in evidence. The only error, therefore, that can be argued to this court now, is as to the materiality of this testimony.

This brings it under the points which we have heretofore discussed, namely, that it was admissible as a part of the *res gestæ*, and as acts of the parties moving in furtherance of the general conspiracy. That it goes very directly and importantly to one of the most serious questions of the issues, we readily admit, and we reiterate what we have before emphasized, that the jury has passed upon the question of Mrs. Josephine P. Waldron's connection with those acts. There was evidence showing her connection, and there being such evidence, the question as to whether or not the connection was shown is clearly not one for an appellate court.

The argument made at page 56 of, counsel's brief as to the

admission of certain parts of the deposition of Judge La Rue, seems to us to present exactly the same question.

We would further call the attention of the court to the fact that the objection was general, and not specific; that it was merely that the evidence was irrelevant, immaterial and impertinent. The particular reason counsel had in mind at the time, was not pointed out to the court, and not ruled upon. Such an objection raises no question requiring the considera tion of an appellate court.

Thompson on Trials, Secs. 693, 694.

The objection made at page 57 of counsel's brief to the testimony of Mrs. Waldron with regard to the telegram from Mrs. E. S. Alexander seems to us equally invalid. The portion of the record cited by counsel shows that their objection on the ground that the testimony stated a portion of the contents of the telegram, was sustained by the court, and no exception of the course was taken. Counsel themselves clearly waived any question by letting the matter pass as it then stood. This leaves no question of law before this court.

VII.

CHARGE TO THE JURY.

We presume that it is not important that the plaintiff in error has not come strictly within the rules, in that she had incorporated in her bill of exceptions the entire charge to the jury, since counsel have saved their points, probably, by excepting to particular portions of the charge which they designate. They assign as error the giving of the following charge:

> "We know as a matter of common observation, that, as a general rule, men woo, and women are wooed and

won; that men seduce and lead women from the path of virtue, and that women are allured, seduced and led astray; but we also know, from common observation, that this general rule does not always hold, and that sometimes women woo men; that sometimes women allure, seduce and debauch men; that women upon occasions induce, allure and persuade men to abandon their wives and form new relations, lawful or unlawful. It will be for the jury to say from all the evidence what were the facts in this cause, and whether the issues stand proved or unproved."

Counsel object to this instruction on the ground that it suggests to the jury that in arriving at their verdict they had a right to appeal to their own judgment and common knowledge as to what were the habits, practices and inclinations of women as to alluring men, and that it left them free to believe that because some woman in some case which they might have known about from personal knowledge or hearsay allured a man, it was quite probable that in this case the defendant had done the same. We think this is quite palpably a tortured meaning of the instruction. The force of the instruction is simply this: to advise the jury that they were not to take into consideration the fact that in human experience men were more often than women the persons who entice, and as such we can see no objection whatever to the instruction. It expressly says that the jury must confine themselves to the evidence and not take into account any prejudice against the propositions presented arising out of their own general experience. Its effect, stated without the slightest taint of obscurity, is simply that the jury must not reject any proof of Mrs. Josephine P. Waldron's enticements, because, in general experience, it appears that men more often than women entice. Therefore the instruction amounts to only this sound proposition of law, viz.: "The jury is to consider the evidence in this case without any prejudice against or for

its probability," and we do not see how it could possibly have had any other meaning to an intelligent body of men. Indeed, if remote suggestions are to be entertained, and finely drawn metaphysical inferences made, we might complain that the instruction of the court stating that men more often entice than women presented a difficulty for us to surmount in our proof. I take it that an instruction to this effect: "It is possible for a woman to entice a man; whether or not that was done in this case is for the jury to say upon the facts before it;" would have been so palpably harmless that counsel for plaintiff in error would not even have argued it, and we do not see the slightest difference, except in length, between such an instruction, and the one given.

Besides, even if there had been an error in this instruction, it is cured by that portion of the instructions of the court appearing at the bottom of page 276 of the printed record, where it is said:

> "A woman cannot be charged in such an action because a married man has become enamored of her, although after he becomes divorced from his wife she consents to marry him. There must be something more: there must be a direct interference on her part, a wrongful act or acts shown, whereby it is made to appear, to the satisfaction of the jury, as charged in this case, that she has wrongfully alienated the affections of the husband from the wife in one of the ways charged."

The last assignment of error alluded to, and that quite briefly, is that the court erred in instructing the jury that if they believed that the injury was inflicted wantonly and maliciously, they might add a sum as exemplary damages, as a punishment to the defendant. It is said that this is wrong because the court did not state that if they believed "from the evidence." It seems to us this objection is frivolous. In the same sentence the jury is instructed to assess the damages after a full and careful examination of all the evidence and circumstances in the

case. It is constantly kept in their minds that they had a right to consider the evidence only.

The rule is settled in Illinois that punitive damages may be given under such circumstances.

Mullin v. *Spangenberg*, 112 Ill., 145.
Rea v. *Tucker*. 51 Ill., 110.
Grable v. *Margrave*, 3 Scam., 372.

In *Brown* v. *Evans*, 17 Fed. Rep., 912, 913, 914, the court used the following language:

> "It may be laid down as a general proposition of law, elementary in character, that in all this class of cases of personal torts, 'vindictive actions,' such as assault and battery, slander, libel, seduction, *crim. con.*, malicious arrests and prosecutions, seizure of goods, etc., where the elements of fraud, malice, gross negligence, cruelty, oppression, brutality or wantoness intervene, exemplary or punitive damages may be recovered from the defendant.
>
> The authorities supporting this position are too numerous to cite or review here. An examination of a few of the authorities will establish the fact that this has been the settled law of this country for more than 100 years, and that such is now the law in nearly all the states of the Union. Nebraska, I believe, is a solitary exception to the rule. The Supreme court of that state holds that under no circumstances can exemplary damages be recovered. The English cases run much further back in point of time, and the American cases are generally in harmony with them.
>
> I am able to refer to only a few of the cases examined on this point, but it is believed that the following cases fully establish the doctrine of exemplary damages in proper cases, and are fair exponents of the great body of American law on this subject: See 1 Sedg. Dam., 53, 174; 2 Sedg. Dam., 323, and note; also pp. 335–344; 13 How., 371; 91 U. S., 493; 3 McLean, C. C., 23; 21 Ia., 379; 4 Duer, 247; 5 Watts, 375; 13 Iowa, 92; 27 Amer. Dec., 685, and notes; 1 Head., 336; 43 Me., 163; 64 N. Y., 440; 24 Wis., 292; 81 Ill., 70; 2 Metc. (Ky.), 146; 6 Tex., 266; 27 Miss., 68; 39 N. H., 576; 43 Miss., 598;

51 Miss., 103; 44 Wis., 282; 3 Scam., 372; 4 Wis., 67; 99 Mass., 552; 114 Mass., 518; 2 Cal., 54; 40 Cal., 578; 45 Cal., 337; 10 Ohio St., 292; 27 Ohio St., 277; 48 Mo., 152; Field, Dam., 70; 2 Greenl. Ev., § 267.

In 3 Scam., 373, the court says:

'In vindictive actions * * * the jury are always permitted to give damages, for the double purpose of setting an example and of punishing the wrong-doer.'

And such is the doctrine of the cases above cited, and of many more examined and not cited.

There was no error in the ruling of the court that this was a case in which exemplary damages might be recovered and should be allowed.

I now proceed to consider the grounds urged for a new trial *seriatim*, as stated by the defendant's counsel in brief.

1. That the court erred in admitting evidence of defendant's wealth.

In this ruling there was no error, this being a vindictive action, in which exemplary damages might be recovered. See 49 N. H., 358–370; Field, Dam., 78, 127, 128, 479, 554, and note; 2 Greenl. Ev., § 269; 27 Miss., 68, 85, 86; 52 Me., 502; 15 Wis., 240; 5 Watts, 375; 44 Wis., 282, 291–294; 4 Duer, 247, 262; 13 Iowa, 92; 4 Wis., 67; 3 Scam., 372; 6 Conn., 24, 27; 48 Mo., 152; 27 Ohio St., 292; 2 Sedg. Dam., 323, and note, 331; 20 Ill., 115.

The reason of this rule is obvious. If exemplary damages may be given by way of punishment for an outrageous act, the jury must know something, at least, of the defendant's ability to respond in damages, since what would be a severe verdict to one of limited means might be but a trifle to one of large means, and the rule utterly fail."

This language was in effect but a re-statement of the language of this court in the case of *Day* v. *Woodworth*, 13 How., 371. The English rule is in accord with this, and is succinctly stated in Wood's Mayne on Damages (1st Am. edition), Sec. 803.

VIII.

CONCLUSION.

In the closing pages of their brief, counsel for plaintiff in error, as we have heretofore pointed out, attempt to inject into this case considerations entirely foreign to the functions of an appellate court. It is said that the verdict was "very large"; "it was "excessive"; that "this was not a common case, but one in "which the sympathies of the jury were easily aroused, and "their prejudices liable to be excited with slight cause." We quite agree that it was not a common case, and if it were proper to go into a discussion of the case as a general metaphysical proposition outside the science of the law, we should be quite willing to join the issue with counsel. The conduct of Mrs. Josephine P. Waldron has been passed upon by a jury of her peers, and she has been punished for her iniquities by damages in a large sum. Whether or not she has been sufficiently punished is not now in question, but it is fair to suggest that, to a woman of her wealth, though the payment of such a sum may be unpleasant, yet it will still leave her with sufficient resources to meet many times over a like question of damages. The point is not as to Mrs. Mary A. Waldron's compensation, but as to her compensation and the punishment of Mrs. Josephine P. Waldron; and, since the issue has been presented, it might be well to add that many courts have decided that, although the court has power to set aside a verdict in a case of criminal conversation as excessive, yet that power has never been exercised.

Duberly v. *Gunning*, 4 T. R., 651.
Smith v. *Maston*, 15 Wendell, 270.

It seems almost improper to cite any authority to meet this vague complaint, yet we trust it will be permissible to quote a few words from Mr. Justice STORY in his decision in the case

of *Thurston* v. *Marten*, 5 Mason, 497, wherein he says that it is one thing for a court to administer its own measure of damages in a cause properly before it, and quite another thing to set aside a verdict of a jury because it exceeds that measure; further saying, "upon a mere matter of damages where, different minds may and probably would arrive at different results, and nothing inconsistent with an honest exercise of judgment appears, I, for one, should be disposed to leave the verdict as the jury found it." This doctrine is elementary, but counsel for plaintiff in error make it pertinent.

In conclusion, we beg to reiterate that this cause was tried upon a voluminous mass of testimony, laying bare almost all of the private life of the three persons involved, giving to the jury an extraordinary opportunity of deciding the real merits of the case, presenting, it will be observed if the evidence is scanned closely, no point of real conflict of testimony except upon the point of the existing affection at the time of the alienation between Mary A. Waldron and her then husband, and some few of the acts tending to show adultery. All other facts brought into evidence by the plaintiff below were practically unresisted except by formal objection under the rules of evidence. That they were facts was practically conceded. We therefore appeal to the court upon the principle that where substantial justice has been done, as evidenced by the record, an appellate court will not reverse for immaterial error. We assert with confidence that no error was committed, and we deem it a most extraordinary fact that in a matter of such intricacy and prolixity there should have been so little ground for alleging error; and even if there were error, we assert the record shows a conspicuous example of the rendition of substantial justice.

Respectfully submitted.

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